



International Law Commission**Seventy-third Session**

Geneva, 18 April–3 June and 4 July–5 August 2022

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

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

2. In accordance with the agreed programme of work and methods of work, Ms. Galvão Teles and Mr. Ruda Santolaria, as Co-Chairs on issues related to statehood and the protection of persons affected by sea-level rise, prepared the second issues paper on the topic ([A/CN.4/752](#)), which was issued in 2022, together with a selected bibliography ([A/CN.4/752/Add.1](#)).

II. Consideration of the topic at the present session

3. The Study Group, which at the current session included 28 members, held nine meetings, from 20 to 31 May, on 6 and 7 July and on 21 July 2022.

A. Introduction of the second issues paper by the Co-Chairs**1. Procedure followed by the Study Group**

4. At the first meeting of the Study Group, held on 20 May 2022, the Co-Chair (Ms. Galvão Teles) indicated that the purpose of the six meetings scheduled in the first part of the session was to allow for an exchange of views on the second issues paper and any relevant matters that its members might wish to address on the topic, insofar as they related to the two subtopics under consideration, namely statehood and the protection of persons affected by sea-level rise. The Co-Chair also invited members to engage in a structured and interactive debate, drawing upon the contents of the second issues paper, and to provide input on a draft bibliography on the subtopics, to be issued as an addendum to the second issues paper. The

¹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10 (A/74/10)*, paras. 267–273.

outcome of the first part of the session would be an interim report of the Study Group, to be considered and complemented during the second part of the session so as to reflect a further interactive discussion on the future programme of work. It would then be agreed upon in the Study Group and subsequently presented by the Co-Chairs to the Commission, with a view to being included in the annual report of the Commission. That procedure, agreed upon by the Study Group, was based on the 2019 report of the Commission.²

5. The Co-Chair also recalled that, as outlined in Part Four of the second issues paper, section II of which addressed the future programme of work of the Study Group, in the next quinquennium, the Study Group would revert to each of the subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – and would then seek to prepare a substantive report on the topic as a whole by consolidating the results of the work undertaken.

2. Presentation of the second issues paper

(a) Introduction, general comments and working methods

6. In a general introduction, the Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) emphasized the preliminary nature of the second issues paper, underlining that it was intended to serve as a basis for the Study Group's discussion and could be complemented by contributions papers prepared by its members.

7. In addition to containing an outline of the purpose and structure of the issues paper (chapter I), the introduction addressed the inclusion of the topic in the Commission's programme of work and the extent to which it had been considered so far (chapter II). It also contained an overview of Member States' expression of support for or interest in the topic, or otherwise, during the debates in the Sixth Committee since 2018, and a summary of the outreach initiatives undertaken by the Co-Chairs (chapter III). Chapter IV of the introduction comprised an update on the scientific findings and prospects of sea-level rise relevant to the subtopics, which was orally complemented to take account of the fact that two new reports of the Intergovernmental Panel on Climate Change had been issued since the submission of the second issues paper, and to share the key findings set out in the report of the panel on the impacts, adaptation and vulnerability with respect to climate change.³ Chapter V of the introduction contained an outline of the relevant outcomes of the International Law Association's work. In that regard, the Co-Chairs noted that the Association had since decided to extend the mandate of the Committee on International Law and Sea-level rise until 2024.

8. The purpose of Part One (entitled "General") was to recall the scope and outcome of the topic, taking into account the limits set forth in the syllabus prepared in 2018.⁴ In doing so, Part One contained, in chapter I, an examination of the issues to be considered by the Commission to the extent that they related to statehood,⁵ the protection of persons affected by sea-level rise,⁶ and the final outcome.⁷ Chapter II recalled that methodological and organizational matters had been addressed in the 2018 syllabus,⁸ in chapter X of the 2019 annual report of the Commission,⁹ and in chapter IX of its 2021 annual report.¹⁰ In that

² *Ibid.*, paras. 270–271.

³ 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* (forthcoming); and Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change – Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (forthcoming).

⁴ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, annex B, paras. 12–14.

⁵ *Ibid.*, para. 16.

⁶ *Ibid.*, para. 17.

⁷ *Ibid.*, paras. 18 and 26.

⁸ *Ibid.*, para. 18.

⁹ *A/74/10*, para. 263–273.

¹⁰ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10)*, para. 245–246.

connection, the Co-Chairs emphasized that State practice was essential for the work of the Commission and encouraged States, international organizations and other relevant entities to continue engaging with the Study Group and the Commission in order to share their practices and experiences with regard to the topic.

(b) Statehood and related observations and guiding questions

9. Part Two of the second issues paper, entitled “Reflections on statehood”, was introduced by the Co-Chair of the Study Group (Mr. Ruda Santolaria) at the second meeting of the Study Group.

10. The Co-Chair recalled that sea-level rise is a global phenomenon, which is not uniform and poses serious threats to all States. For low-lying and small island developing States, the threat is existential in nature, and in the case of small island developing States, it concerns their very survival. He noted that, while there had been cases within the same State of evacuation of the population from one island to another,¹¹ there was no record of situations where the territory of a State had been completely submerged or rendered uninhabitable. In the light of the progressive character of the phenomenon, such a situation could not, however, be considered a distant theoretical concern. The Co-Chair also recalled that the preliminary reflections on statehood did not aim to prejudge or formulate conclusions on those sensitive matters, which deserved considerable caution. The paper aimed to explore certain past or present experiences or situations so as to establish a list of relevant international law issues to be analysed from the perspective of both *lex lata* and *lex ferenda*.

11. Turning to chapter II of Part Two of the issues paper, which focused on criteria for the creation of a State, the Co-Chair recalled that there was no generally accepted notion of a “State”. He noted, however, that to be considered a “person” or subject of international law, a State had to meet four criteria in accordance with article 1 of the 1933 Convention on the Rights and Duties of States:¹² (a) permanent population; (b) defined territory; (c) government; and (d) capacity to enter into relations with other States. The Co-Chair pointed out that the latter point also applied to other subjects of international law. A general overview of the criteria was provided in chapter II. As a matter of further reference, chapter II also explored the characteristics of a State contained in provisions of other illustrative texts: the 1936 resolution of the Institut de Droit International concerning the recognition of new States and new Governments;¹³ the 1949 draft Declaration on Rights and Duties of States;¹⁴ the 1956 draft articles on the law of treaties, of the International Law Commission;¹⁵ and the opinions of the Arbitration Commission of the 1991 International Conference on the Former Yugoslavia,¹⁶ in which the definition of the characteristics of a State was consistent with the requirements of the Convention on the Rights and Duties of States.

12. Chapter III contained some representative examples of actions taken by States and other subjects of international law, starting with the Holy See and the Sovereign Order of Malta. In that regard, it was noted that those entities, despite having been deprived of their territories at a certain point in history, maintained their legal personality and continued to exercise some of their rights under international law, in particular the right of legation and the treaty-making power (sections A and B). Chapter III (section C) also considered the example of Governments being forced in exile by foreign military occupation or other

¹¹ For example, the people of the Carteret Islands, in Papua New Guinea, have been relocated owing to sea-level rise.

¹² Convention on the Rights and Duties of States (Montevideo, 26 December 1933), League of Nations, *Treaty Series*, vol. CLXV, No. 3802, p. 19.

¹³ Institut de Droit International, “Resolutions concerning the recognition of new States and new Governments” (Brussels, April 1936), *The American Journal of International Law*, vol. 30, No. 4, Supplement: Official Documents (October 1936), pp. 185–187.

¹⁴ *Yearbook of the International Law Commission 1949*, p. 287.

¹⁵ *Yearbook of the International Law Commission, 1956*, vol. II, document A/CN.4/101, para. 10, at pp. 107–108.

¹⁶ Maurizio Ragazzi, “Conference on Yugoslavia Arbitration Commission: opinions on questions arising from the dissolution of Yugoslavia”, *International Legal Materials*, vol. 31, No. 6 (November 1992), pp. 1488–1526, at p. 1495.

circumstances. In that connection, it was noted that, despite losing control over all or a large part of their territory, the affected States retained their status as such and their representative organs moved to territories under the jurisdiction of third States that hosted them, which was regarded as constituting evidence of a presumption of continuity of statehood. In a similar vein, the Co-Chair, drawing upon certain international instruments referred to in section D of chapter III, including the Convention on the Rights and Duties of States, noted that once a State was created as such under international law, it had an unalienable right to take measures to remain a State.

13. With respect to chapter IV, on concerns relating to the phenomenon of sea-level rise and measures taken in that regard, the following aspects were listed for consideration relevant to the issue of statehood:

(a) the possibility that the land area of the State could be completely covered by the sea or rendered uninhabitable, and that there would not be sufficient supply of drinking water for the population;

(b) the progressive displacement of persons to the territories of other States, which in turn raised questions related to nationality, diplomatic protection and refugee status;

(c) the legal status of the Government of a State affected by sea-level rise that had taken residence in the territory of another State;

(d) the preservation of the rights of States affected by the phenomenon of sea-level rise in respect of the maritime areas;

(e) the right to self-determination of the populations of affected States.

14. The Co-Chair further stressed the need to examine measures aimed, on the one hand, at mitigating the effects of sea-rise level – such as coastal reinforcement measures and the construction of artificial islands – and, on the other hand, possible alternatives for the future concerning statehood in the event of complete inundation of a State's territory. With respect to the former, the high cost of preservation measures and the need to assess their environmental impact were underlined, including through cooperation in favour of the most affected States. In connection with the latter, the urgent necessity to take into account the perspective of small island developing States was also emphasized.

15. Against the above background, chapter V presented several preliminary alternatives that were neither conclusive nor limitative. The first of the proposed alternatives was to assume a presumption of continuity of statehood. That proposal was in line with the preliminary approach taken by the International Law Association and with the views expressed by some States, that the Convention on the Rights and Duties of States applied only to the determination of the birth of a State rather than to its continued existence. At the same time, it was noted that continuity of statehood in the absence of a territory could entail certain practical problems, such as statelessness of its population or difficulties in exercising rights over maritime zones. Another possible alternative that could be explored consisted in maintaining some form of international legal personality without a territory, similar to the examples of the Holy See and the Sovereign Order of Malta, in relation to which the Co-Chair outlined various modalities: (a) ceding or assignment of segments or portions of territory in other States, with or without transfer of sovereignty; (b) association with other State(s); (c) establishment of confederations or federations; (d) unification with another State, including the possibility of a merger; and (e) possible hybrid schemes combining elements of more than one modality, specific experiences of which may be illustrative or provide ideas for the formulation of alternatives or the design of such schemes.

16. At the third meeting of the Study Group, the Co-Chair introduced the guiding questions related to statehood, contained in paragraph 423 of the paper. He emphasized that these questions were meant to serve as a basis for future discussions within the Study Group.

(c) **Protection of persons affected by sea-level rise and related observations and guiding questions**

17. At the fourth meeting of the Study Group, the Co-Chair (Ms. Galvão Teles) recalled some of the preliminary observations based on Parts Three and Four of the second issues paper, concerning the subtopic “Protection of persons affected by sea-level rise”.

18. The Co-Chair noted that the existing international legal frameworks potentially applicable to the protection of persons affected by sea-level rise were fragmented and general in nature, suggesting that they could be further developed to address specific needs of affected persons. In particular, the existing framework could be further complemented to reflect the specificities of the long-term or permanent consequences of sea-level rise and to take account of the fact that the affected persons could remain *in situ*, be displaced within their own territory or migrate to another State in order to cope with or avoid the effects of sea-level rise. In that connection, the Commission’s prior work, namely the 2016 draft articles on the protection of persons in the event of disasters,¹⁷ was regarded as a basis for that exercise.

19. The Co-Chair also noted that, while relevant State practice at the global level remained sparse, it was more developed among States already affected by sea-level rise. The Co-Chair observed that some of the practice identified was not specific to sea-level rise, but generally concerned the phenomena of disasters and climate change. Nonetheless, the practice identified revealed several principles that might prove useful for the Study Group’s examination of the topic. It was also observed that international organizations and other entities with relevant mandates were taking a more proactive approach in order to promote practical tools to enable States to be better prepared to address issues related to human rights and human mobility in the face of climate displacement. The Co-Chairs’ efforts to facilitate the exchange of information with States, international organizations and other stakeholders, including through expert meetings, were also underlined.

20. The Co-Chair recalled several relevant international instruments examined in Part Three of the second issues paper, including the Guiding Principles on Internal Displacement,¹⁸ the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),¹⁹ the New York Declaration for Refugees and Migrants,²⁰ the Global Compact for Safe, Orderly and Regular Migration,²¹ the Sendai Framework for Disaster Risk Reduction 2015–2030,²² the Nansen Initiative’s Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change,²³ and the International Law Association’s Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea-level Rise.²⁴ The importance of the recent Views adopted by the Human Rights Committee in *Teitiota v. New Zealand*,²⁵ which concerned the applicability of the *non-refoulement* principle in the context of both climate change and sea-level rise, was noted. The Co-Chair further noted that, according to the Human Rights Committee in that case, the effects of climate change, namely sea-level rise, in receiving States could 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)

¹⁷ *Yearbook of the International Law Commission, 2016*, vol. II (Part Two), para. 48.

¹⁸ [E/CN.4/1998/53/Add.2](#), annex.

¹⁹ 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.

²⁰ General Assembly resolution 71/1 of 19 September 2016.

²¹ General Assembly resolution 73/195 of 19 December 2018, annex. See also [A/CONF.231/7](#).

²² General Assembly resolution 69/283 of 3 June 2015, annex II.

²³ Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol. 1 (December 2015).

²⁴ Final report of the Committee on International Law and Sea-Level Rise, in International Law Association, *Report of the Seventy-eighth Conference, Held in Sydney, 19–24 August 2018*, vol. 78 (2019), pp. 897 *ff.*, and resolution 6/2018, annex, *ibid.*, p. 33.

²⁵ [CCPR/C/127/D/2728/2016](#).

of the International Covenant on Civil and Political Rights,²⁶ thereby triggering the *non-refoulement* obligations of sending States.

21. Turning to Part Four of the second issues paper, the Co-Chair then referred to paragraph 435, which contained a list of guiding questions related to the protection of persons affected by sea-level rise. The questions were divided into three subsets, relating to: (a) the principles applicable to the protection of the human rights of the persons affected by sea-level rise; (b) the principles applicable to situations involving evacuation, relocation, displacement, or migration of persons, including vulnerable persons and groups, owing to the consequences of sea-level rise or as a measure of adaptation to sea-level rise; and (c) the applicability and scope of the principle of international cooperation to help States with regard to the protection of persons affected by sea-level rise. The Co-Chair emphasized that the guiding questions had been proposed in order to structure the future work of the Study Group on the topic, and that proposals or contributions from its members on any of the issues raised therein, and on aspects of State practice and the practice of relevant international organizations and other relevant entities with regard to the issues raised therein, would be welcomed.

B. Summary of the debate

1. General comments

(a) Topic in general

22. Commenting on the topic in general terms, members of the Study Group reiterated the topic's relevance and the crucial importance of the Commission's discussion for States that are directly affected by sea-level rise, including for some whose survival might be threatened. Some members also expressed a sense of urgency given the issues at stake and the gravity of the situation, noting that sea-level rise had consequences that affected many branches of international law. It was also noted that the States that could be at risk of losing their statehood were small island developing States, which contributed the least to pollution emissions in the atmosphere yet were the most affected by climate change through sea-level rise.

23. It was also noted, however, that while the needs of small island developing States as specially affected States should be carefully taken into account, consistent with the position of the Commission in its study on the identification of customary international law,²⁷ the Commission ought not to overlook the comments and needs of other States, given that the legal consequences of sea-level rise would affect not only small island developing States and coastal States, but all States. It was also noted that a middle path had to be found between the human and legal dimensions of the topic to make sure that the former was wedded with the latter. It was furthermore underlined that some aspects of the topic addressed difficult and sensitive matters in the nature of policy questions, in relation to which the Commission ought to be cautious, and that the Commission should focus on legal aspects of the topic, in accordance with its mandate to progressively develop and codify international law.

(b) Second issues paper

24. Members of the Study Group largely expressed gratitude to the Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) for a very well-documented and structured second issues paper, noting that it presented extensive relevant information in a systematized way, that it was of high quality and that it provided an excellent basis for the Study Group to deliberate on the two subtopics under consideration. It was also noted, however, that the relevance of some developments in the paper – such as comments on the issues of nationality and diplomatic protection with regard to statehood – was not obvious. It was also recalled

²⁶ International Covenant on Civil and Political Rights (New York, 16 December 1966), United Nations, *Treaty Series*, vol. 999, No. 14668, p. 171.

²⁷ A/73/10, chap. V (paras. 53–66).

that the content of the issues paper pertained to the Co-Chairs, not to the Commission as a whole.

25. Members further welcomed the Co-Chairs' outreach efforts on the topic, in terms of both gathering evidence of the practice of States, international organizations and other relevant entities and generating greater interest in and contributions on the topic in intergovernmental and academic fields.

(c) Scope of the work of the Study Group and working methods

26. Regarding the scope of the work of the Study Group, differing views were expressed in relation to both the material scope and the temporal scope of the topic: while some members of the Study Group considered that they were too ambitious and ought to be narrowed, limitations placed upon the topic were viewed by others as preventing the Study Group from reaching conclusions on whether existing international law would be sufficient to address the challenges faced or whether new rules or principles were required to fill potential gaps.

27. The need to focus on the legal dimension of the topic and avoid speculative scenarios, while ascertaining the operational role of the Commission and distinguishing matters of policy from matters of international law, was also emphasized. In the latter regard, it was suggested that the role of the Commission on the topic should be limited to reviewing or outlining the relevant legal problems arising from situations of sea-level rise. It was also suggested, in contrast, that the Commission could examine policy-related issues and allow for the possibility of developing existing law or, at least, of making non-binding policy suggestions.

28. The need to identify the nexus between the subtopic on issues related to the law of the sea – which the Commission had considered during its seventy-second session – and the subtopics being examined at the current session was also underlined. In that regard, the interrelation between the impact of sea-level rise and the law of the sea was underlined, in particular the principle that “the land dominates the sea” and the principle of freedom of the seas.

29. With regard to working methods, it was noted that it would be useful to clarify how the product of the Study Group would reflect its members' contribution papers. It was further suggested that the Commission, in its future configuration, could consider turning the topic into a traditional topic, with a designated special rapporteur or rapporteurs and with public debates in a plenary format.

(d) Scientific findings

30. With regard to scientific findings, while it was suggested that the Commission might need to appraise the scientific findings upon which it relied so as to be in a position to provide a uniform assessment of the risks, members largely recalled that the work of the Study Group was based on the common ground that sea-level rise was a fact, already proved by science, which was significantly affecting a number of States and was a global phenomenon. It was also noted that an excellent outline of the available scientific data was given in paragraphs 45 to 51 of the second issues paper, and that it was wise to lean – as did the first and second issues papers – on the work of highly regarded expert groups such as the Intergovernmental Panel on Climate Change.

31. On whether future meetings with scientists were needed, differing views were expressed. Members of the Study Group nonetheless welcomed the Co-Chairs' proposal to organize focused meetings to inform and educate them about the aspects most relevant to their study of the legal questions.

(e) State practice

32. Members of the Study Group reiterated that State practice was essential to the work of the Study Group on the topic and that the limited State practice available restricted the mapping exercise with which it had been entrusted. It was also emphasized that, so far, no States were in the process of becoming completely submerged or otherwise uninhabitable.

33. In terms of scale and representativity, while it was noted that regional practice from small island States – specifically in the Pacific – was steadily emerging, a paucity of comments from Latin America and the Caribbean, Asia and Africa was observed, in conjunction with the need for the Commission to pursue governmental outreach initiatives and for members of the Study Group to prepare contribution papers on regional practice.

34. It was suggested that, in the particular circumstances of an extremely complex, existential and unavoidable phenomenon such as sea-level rise, where there was limited State practice since no State had yet been fully submerged, the Commission might instead have recourse to reasoning by analogy and interpretative norms, consistent with its mandate to progressively develop international law. In that sense, it was recalled that international legal practice included use of international law principles and constant interpretation of legal norms in the light of events, in order to be able to address new challenges when appropriate. The need for the Commission to reflect on the basis of international law and to generate a dialogue on the possible options and alternatives, as the Co-Chairs had done to identify the most suitable of them, was also underlined.

(f) Sources of law

35. With regard to sources of law, it was reiterated that the Commission should take account of treaties, custom and general principles of law that could be applicable – including, for example, the principle of equity, the principle of good faith and the principle of international cooperation – as relevant to the topic. The central role of the United Nations Convention on the Law of the Sea and the need to preserve its integrity was also emphasized.²⁸

36. It was suggested by some members of the Study Group that the principle of international cooperation seemed equally relevant to both subtopics under consideration. It was also observed that the principle could play an important role for States to provide for their own preservation, as suggested by the Co-Chairs in the second issues paper. Given the particularly high cost of preservation measures such as the installation or reinforcement of coastal barriers or defences and dykes, the importance of international cooperation through technology transfer and the exchange of best practices was thus underlined. International cooperation was deemed equally important in relation to the construction of artificial islands to house persons affected by the phenomenon of sea-level rise, given the cost of these initiatives and their potential environmental impact, so that other such durable and environmentally sustainable formulas could be found. The need to identify practical ways and means to achieve such international cooperation was underlined.

37. It was also observed that any reflection on statehood and sea-level rise should include the principle of common but differentiated responsibilities, insofar as the cost of addressing such a severe global environmental problem should be distributed among different States according to their historical responsibility and to their capabilities. To that end, the Study Group could build upon the already existing legal frameworks designed to address climate-related global challenges, including, *inter alia*, article 2 of the Vienna Convention for the Protection of the Ozone Layer,²⁹ principle 7 of the Rio Declaration on Environment and Development,³⁰ article 3 of the United Nations Framework Convention on Climate Change³¹

²⁸ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.

²⁹ Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985), United Nations, *Treaty Series*, vol. 1513, No. 26164, p. 293.

³⁰ [A/CONF.151/26/Rev.1 \(Vol. I\)](#).

³¹ United Nations Framework Convention on Climate Change (New York, 9 May 1992), United Nations, *Treaty Series*, vol. 1771, No. 30822, p. 107.

and the Kyoto Protocol thereto,³² article 20 of the Convention on Biological Diversity,³³ and the Paris Agreement.³⁴

38. Differing views, encompassing support and scepticism, were also expressed in relation to the relevance to statehood of the principle that the land dominated the sea.

2. Comments on statehood and related observations and guiding questions

(a) Criteria of the Convention on the Rights and Duties of States

39. During the exchanges on statehood, it was noted that statehood was a complex issue deserving of caution, and emphasized, as outlined in the second issues paper, that there was neither a generally accepted definition of a State, nor clearly defined criteria for the extinction of a State. It was noted that the Commission itself had faced difficulties in defining statehood in the context of its work on the 1949 draft Declaration on Rights and Duties of States. In that regard, it was observed that the term “State” had many meanings, that it had to be interpreted in the context of a particular treaty, and that there was controversial international case law on the matter. It was also noted that the issue of statehood was relevant only to those States whose territory could totally disappear or become unsuitable for sustaining human habitation or economic life, suggesting that the effect of sea-level rise could be limited to a very small number of States.

40. Diverse views were expressed regarding the relevance of the four criteria for the establishment of a State as set out in article 1 of the Convention on the Rights and Duties of States, namely that a State have a permanent population, a defined territory, a sovereign Government, and the capacity to enter into relations with other States and other subjects of international law.

41. In that connection, it was noted that each of the criteria was multifaceted, with many exceptions, possibilities and changing definitions. While these criteria were deemed to be a useful anchoring or starting point for the discussion on statehood and sea-level rise, it was noted that they were the product of a different historical context, at a time when the disappearance of a territory due to environmental changes was conceivable as a matter of fiction only. As such, they might unnecessarily limit the statehood options remaining for affected States. It was also observed that the criteria were not indefinite requirements, and that a State could not automatically disappear because it no longer met one of them, especially through the loss of a territory or a population due to inhabitability.

42. Regarding the criterion of territory, it was affirmed that a territory was a prerequisite for the establishment of a State, and that the existence of land territory had been a deeply rooted aspect of statehood. In contrast, it was noted that sovereignty referred to the whole territory under the State’s control and not solely to the land territory. Thus, a territory that became fully submerged because of sea-level rise should not be considered a non-existent territory.

43. It was also underlined that the capacity to enter into relations with other States, the fourth criterion, was viewed in some legal traditions as a consequence stemming from statehood, meaning that there were in fact three real constituent elements of a State: a territory, a population and an effective Government.

44. It was further noted that, in their practice, States had developed a whole set of modern criteria that supplemented those of the Convention on the Rights and Duties of States, hence the need for the Commission to be careful with its conclusions in that regard. A study on the practice of States regarding the interpretation of the criteria of the Convention on the Rights and Duties of States might therefore be helpful, including to take account of the decisions of the Security Council of the United Nations given their importance in certain cases of

³² Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997), United Nations, *Treaty Series*, vol. 2303, No. 30822, p. 162.

³³ Convention on Biological Diversity (Rio de Janeiro, 5 June 1992), No. 30619, p. 79 United Nations, *Treaty Series*, vol. 1760, No. 30619, p. 79.

³⁴ Paris Agreement (Paris, 12 December 2015), United Nations, *Treaty Series*, No. 54113 (volume number has yet to be determined), available from <https://treaties.un.org>.

statehood. The point was also made that, according to State practice, failure to meet any of the criteria of the Convention on the Rights and Duties of States did not necessarily result in the termination of statehood.

(b) Statehood and self-determination

45. In the course of the discussion, it was observed that, with a view to understanding which statehood options could be made available to States affected by sea-level rise, the interests and needs of the affected population should be an essential consideration. In that regard, the preservation of an affected population as a people for the purposes of exercising the right of self-determination should be one of the main pillars of the work of the Commission on the issue. At the same time, it was noted that the Commission should keep in mind the special historical and legal contexts of the right to self-determination and exercise caution in applying that principle in relation to sea-level rise.

(c) Statehood and presumption of continuity

46. Turning to comments on the presumption of continuity of submerged or uninhabitable States and the maintenance of their international legal personality, as outlined in the second issues paper, various views were expressed by members of the Study Group.

47. It was indicated that the presumption of continuity of statehood was a relevant solution to address the consequences of sea-level rise, expressing support for the customary presumption to be considered by the Study Group as a starting point, given that, in particular, there was no clear criterion in customary international law for the cessation of a State. In that regard, it was noted that such an approach would also be in line with the preliminary conclusions reached by the International Law Association during its 2018 Sydney Conference. It was further asserted that the right to preservation was a right inherent in Statehood.

48. According to another view that was presented, preliminary presumption of continuity of statehood was subject to further consideration by States, some of which had previously supported that option, disfavoured the extinction of States affected by sea-level rise. It was also suggested that it was not an issue on which the Commission could draw a specific conclusion, given that its role should be limited to outlining the relevant legal problems arising from the situation of sea-level rise, rather than taking further steps to provide specific solutions.

49. In that regard, it was recalled that, consistent with the 2018 syllabus, as referred to in paragraph 64 of the second issues paper, the Commission was, *inter alia*, to undertake an “analysis of the possible legal effects on the continuity or loss of statehood in cases where the territory of island States is completely covered by the sea or becomes uninhabitable”.³⁵ It was accordingly proposed that the Commission might consider: (a) legal issues arising from the continuity of statehood in the absence of territory, such as diplomatic protection for de facto stateless persons, which were partly discussed in the issues paper; and (b) legal issues arising from the discontinuity of statehood, namely extinction of statehood, which had not been considered so far.

50. It was also noted that the principle of continuity of statehood was temporary, aimed at allowing a State to be protected in the absence of a normal situation, as, for example, in the event of military occupation of a territory or internal violence, referred to in paragraphs 192 and 193 of the second issues paper. Further, it was observed that the inundation of a territory or complete absence thereof could not be compared to a change in a territory, and that the presumption of continuity could be envisaged only where a territory and population existed. In that regard, while it was recalled that a territory was an indispensable element of a State, it was also stressed that, rather than depending upon its territory and population, the presumption of continuity of a State was attached to its legal personality.

51. The risks associated with the continuation of statehood in the absence of a territory, or where a disembodied State, without a territory, was subject to the sovereignty of another

³⁵ A/73/10, annex B, para. 16.

State, were also underlined. The capacity of such a State to uphold its international and domestic obligations, whether, for example, in relation to its maritime zones or in the field of human rights, migration and refugee law, was also questioned. The need for the Study Group to identify means and methods for preserving peoples' cultural and traditional identity, whether by statehood or otherwise, in low-lying coastal land as well as in fully submerged territories, were also stressed.

(d) Other possible alternatives for the future concerning statehood

52. Against the background of the above exchange, the Study Group also examined the other possible alternatives for the future concerning statehood, as set out in chapter V of Part Two of the issues paper, such as the maintenance of international legal personality without a territory, and the use of various modalities, as listed in paragraph 15 above, to maintain statehood.

53. In doing so, the Study Group generally welcomed the in-depth analysis and the many illustrative examples explored by the Co-Chair, including those of the Holy See, the Sovereign Order of Malta, and Governments in exile. While it was suggested that they might be helpful to the Study Group in further assessing the loss of statehood for submerged or uninhabitable States, they were deemed of historical interest rather than useful analogies in examining options aimed at maintaining the existence of States affected by sea-level rise. In that regard, it was notably emphasized that the context surrounding the examples provided by the Co-Chair, in which the entities in question appeared not to be truly regarded as a State, was fundamentally different to the context of a territory becoming unavailable, as in the case of sea-level rise.

54. Taking into account the various options examined in the second issues paper, it was suggested that a careful and prudent analysis of the possible alternatives be carried out, and that the creation of *sui generis* legal regimes, on the basis of either agreements between States or decisions by the international community, not be ruled out. In that regard, reference was made to certain cases in which various association agreements allowed the free movement of persons from small island States to a larger State, whereas in other cases no such agreement existed, with the example provided of a procedure in place for other small island States whereby only 75 persons selected by ballot were allowed to move to the larger State each year.

55. In contrast, the view was expressed that it was not the role of the Commission to recommend certain arrangements over others, a task that should be left to the political realm. Also noted was the potential imbalance in power between a disappearing State and the other (potentially receiving) State with which it would be negotiating a solution: in such a context, the maritime entitlements of the disappearing State could largely or entirely be transferred to the other (receiving) State as part of the arrangement.

(e) Statehood and reclamation efforts

56. Given the importance attached to the possession of a territory in practice, even in small amount, it was suggested that a potential solution could lie in preserving some part of a disappearing State, such as through reclamation efforts. Those efforts would take an already existing feature, in its natural condition – such as an island – and expand the size of that feature so as to increase the land mass.

(f) Statehood and compensation

57. It was suggested that, rather than analysing various concepts of statehood and trying to find precedents where there were none, it would be useful to give consideration to the classic issue of compensation for the damage caused, keeping in mind that considerations of continuity of sovereignty would not resolve the challenges faced by the most affected States, which had contributed the least to a phenomenon largely caused by uncontrolled human industry. It was alternatively suggested that addressing compensation as part of the topic could be counterproductive and that it was not expressly mentioned in the 2018 syllabus.

58. It was also noted that some States had expressed concerns about the subtopic of statehood and that it might be necessary to ascertain the extent to which global sea-level rise

was attributable to changes in coastlines, given that other such human activity could explain the phenomenon.

(g) Comments on guiding questions

59. Members of the Study Group made the following observations with respect to the guiding questions listed in paragraph 423 of the second issues paper:

(a) It was suggested that it should be possible for a State, in exceptional circumstances, to continue its existence despite no longer meeting some or all of the criteria set out in the Convention on the Rights and Duties of States. Yet, caution was called for, as practical situations would always be open to interpretation. At the same time, it was noted that the criteria of population and territory remained crucial, and that the prolonged or permanent loss of territory would inadvertently have an effect on statehood;

(b) It was noted that the cases of the Holy See and the Sovereign Order of Malta were not helpful to the examination of the subtopic, although it was also observed that while not directly related, they could be considered by analogy. Relatedly, cases of Governments in exile, which were by definition temporary and did not involve the disappearance of a territory, were not considered directly relevant. According to another view, some valuable conclusions could be drawn from cases of Governments being forced in exile for, at least, the immediate aftermath of the disappearance of a State's land territory due to sea-level rise or for when the land territory of a State became uninhabitable despite not being totally covered by the sea;

(c) Hesitation was expressed as to the existence and content of the right of a State to provide for its preservation, and it was proposed that the Study Group avoid addressing preservation measures from the rights and obligations perspective;

(d) and (e) It was observed that maintaining a presumption of continuity of statehood could result in complex practical difficulties. It was deemed uncertain whether the questions in subparagraphs (d) and (e) were practical or necessary for the Study Group to explore. At the same time, it was proposed that the Study Group develop a set of preventive tools for States to use;

(f) It was noted that any practical modalities would depend on agreements between the States concerned. Some members expressed doubt as to the possibility of expanding the right to self-determination in that context;

(g) A view was expressed that there was no presumption of continuity of statehood. It was also noted that the Study Group should not determine the existence of such a presumption, but instead explore whether it was appropriate;

(h) It was noted that, assuming that a State could still maintain its jurisdiction over maritime zones despite losing its land territory, practical difficulties would arise, including in terms of the State fulfilling its obligations within those zones. Nonetheless, that situation was considered as a potential recourse for affected States. The need to differentiate between cases of complete and partial inundation, and situations where the land territory of a State became uninhabitable despite not being totally covered by the sea, was emphasized;

(i) According to one view, the question in subparagraph (i) was not useful or relevant to the topic. It was also noted that suggesting specific modalities, such as the establishment of a self-governing area within the territory of a third State, was beyond the scope of the topic;

(j) It was observed that the choice of statehood options was a policy issue and would depend on agreements between the States concerned in each particular case.

3. Comments on the protection of persons affected by sea-level rise and related guiding questions

(a) Existing legal frameworks

60. During discussions on the subtopic at the fourth and fifth meetings of the Study Group, it was noted that there was no legal framework that provided for a distinct legal status of

persons affected by sea-level rise and that existing applicable frameworks were highly fragmented. Support was voiced for the proposal to identify and assess the effectiveness of the existing principles applicable to the protection of persons affected by sea-level rise. The need to consider different features of sea-level rise in the course of that exercise was emphasized. According to another view, it was questionable as to whether the fragmented nature of applicable rules caused any practical problems. It was therefore considered unnecessary to develop a highly specific legal framework for the protection of the narrow group of persons affected by sea-level rise.

61. While commenting on the question of the applicability of existing legal frameworks, some members noted that international refugee law, climate change law and international humanitarian law were not equipped to deal with the protection of persons affected by sea-level rise. In contrast, several relevant international legal instruments, such as the Kampala Convention, the New York Declaration for Refugees and Migrants and the Global Compact for Safe, Orderly and Regular Migration, were noted as examples of successful State cooperation. Members also recalled recent relevant case law of the United Nations human rights treaty bodies.³⁶

62. With respect to the question of available State practice, regret was expressed that only a few States had provided the Commission with relevant information on the topic. It was proposed that the request to States, international organizations and other relevant entities for information and practice be reiterated. Examples were provided of administrative policies adopted by States in response to cross-border displacement induced by sea-level rise. The practices of issuing humanitarian visas and of granting subsidiary protection to persons not qualifying as refugees were regarded as requiring further examination.

(b) Applicability of human rights law

63. It was recognized that climate change and sea-level rise could adversely affect the enjoyment of human rights, and that there was a need to view all human rights – civil, political, economic, social and cultural – as interrelated, interdependent and indivisible. It was also noted that, while not directly addressing the issue of sea-level rise, certain regional instruments, such as the Cartagena Declaration on Refugees³⁷ and the Brazil Declaration³⁸ in Latin America or the Kampala Convention in Africa,³⁹ did take into account climate change and disasters as cause for movement of persons who needed protection. It was further stressed that States must respect their human rights obligations while addressing the phenomenon of sea-level rise. Relatedly, it was recalled that the Human Rights Council had recently recognized the right to a clean, healthy and sustainable environment.⁴⁰

64. Some members of the Study Group questioned whether the international human rights law framework could be fully relevant to the protection of persons affected by sea-level rise. It was observed that while States had human rights obligations towards individuals, the sea-level rise phenomenon was not directly attributable to any particular State. Accordingly, it was unclear how human rights rules would operate within that context and, specifically, how and against whom claims related to sea-level rise could be brought. Those questions were considered even more pertinent in the case of a State whose territory was completely submerged or rendered uninhabitable. In response, it was also argued that human rights law was an important lens through which to view the sea-level rise phenomenon, and maintained that the human rights of individuals remained inalienable even if their State had ceased to exist owing to sea-level rise. It was, however, considered necessary to examine the extent to

³⁶ For example, *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016) and *Bakatu-Bia v. Sweden* (CAT/C/46/D/379/2009).

³⁷ Cartagena Declaration on Refugees, adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems, held in Cartagena, Colombia, on 19–22 November 1984. Available at www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf.

³⁸ Brazil Declaration: “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean”, 3 December 2014. Available at: <https://www.unhcr.org/brazil-declaration.html>.

³⁹ See footnote 19 above.

⁴⁰ See Human Rights Council resolution 48/13 of 8 October 2021.

which human rights rules were applicable in the context. A proposal was made to assess how better to integrate human rights obligations into the climate change legal framework. An additional examination of the *non-refoulement* principle in the context of sea-level rise was suggested.

65. An argument was raised that it was difficult to examine the applicability of human rights law in the context of sea-level rise without addressing the issue of causation, because in order to determine how human rights law applied, it was necessary to identify which specific State or States were responsible in any given case for the protection of applicable human rights. It was noted in response that the Study Group had intentionally excluded causation from the scope of the topic,⁴¹ and that addressing it would not be helpful for the Study Group's work.

(c) Comments on guiding questions

66. Members of the Study Group made the following observations with respect to the guiding questions listed in paragraph 435 of the issues paper:

(a) It was suggested that the human rights mentioned be addressed by category, namely civil and political rights on the one hand, and economic, social and cultural rights on the other. Furthermore, it was noted that the principles of non-discrimination, equality and equal protection of the law should be included among those applicable to the protection of the human rights of persons affected by sea-level rise;

(b) A concern was raised that the measures referred to with regard to displacement and human mobility were too specific to be recommended as a general rule, since the choice in every particular case would depend to a great extent on domestic legal and administrative frameworks. It was also observed that a preferential regime for individuals displaced owing to sea-level rise could be seen as discriminatory towards people escaping other consequences of climate change. The importance of prevention and prohibition of arbitrary displacement in situations involving the evacuation, relocation, displacement or migration of persons owing to the consequences of sea-level rise was emphasized;

(c) The importance of the principle of international cooperation was stressed. According to another view, the principle was a political concept, and it was questionable as to whether any legal consequences could be derived from it. For guidance on the applicability and scope of the principle of international cooperation, it was therefore suggested that the Study Group refer to the Commission's draft articles on the protection of persons in the event of disasters and to principle 4 of the International Law Association's Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea-level Rise.⁴²

4. Future work of the Study Group

67. In connection with the comments made with respect to the Study Group's scope of the work and working methods (paras. 26–29 above), concern was expressed that the scope of the subtopics was too broad, and it was suggested that the number of questions under examination be reduced. A proposal was also made to focus predominantly on areas with sufficiently developed practice. Relatedly, it was suggested that the Study Group should leave issues related to statehood aside and focus in its future work on issues related to the law of the sea and to the protection of persons affected by sea-level rise.

68. Regarding the subtopic of statehood, it was noted that further study was required of the question of extinction of statehood, as it had not been sufficiently explored in the second issues paper. Likewise, it was noted that the Study Group should further examine cases of partial land inundation, cases in which the land territory became uninhabitable despite not being totally covered by the sea, and coastal defence measures and the construction of artificial islands. With respect to the subtopic of the protection of persons affected by sea-level rise, it was proposed that matters of protection of persons *in situ* and in displacement

⁴¹ A/73/10, annex B, para. 14.

⁴² Final report of the Committee on International Law and Sea-Level Rise, in International Law Association, *Report of the Seventy-eighth Conference* (see footnote 24 above), p. 904, and resolution 6/2018, annex, *ibid.*, p. 33.

be considered separately. Moreover, three broad subjects for further study were put forward: (a) human rights obligations; (b) issues specific to the movement of persons, including displacement; and (c) the obligation to cooperate.

69. It was noted that the Study Group's work needed to be based on the previous work of the Commission, in particular on the draft articles on the protection of persons in the event of disasters. At the same time, the need to examine specific aspects of sea-level rise, namely its irreversibility and long-term nature, was emphasized. It was also proposed that the Study Group consider establishing a dialogue with human rights expert bodies within the United Nations system on the subtopic of the protection of persons affected by sea-level rise. On that subtopic, it was further suggested to operate on the basis of a combined rights-based and needs-based approach.

70. With regard to the outcome of the Study Group's work, various proposals were made, including that a framework convention be drafted on issues related to sea-level rise, which could be used as a basis for further negotiations within the United Nations system, following the example of the Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.⁴³ Another proposal was to focus the work of the Study Group on more concrete, limited outcomes, such as a draft treaty on a new form of subsidiary protection for persons affected by sea-level rise, or a detailed analysis, for illustrative purposes, of certain specific human rights to determine how exactly they were affected and should be protected when affected by sea-level rise. Support was voiced for the development of guidelines for bilateral agreements between States and for the preparation of a list of legal questions to be addressed at the political level within the United Nations. It was also noted that the short-term outcome of the Study Group's work would be its final report, on all subtopics, yet the Commission's work could be continued beyond that outcome in a different format. In that regard, a proposal was made to include, in the final report of the Study Group, a draft resolution addressing all outstanding political issues, for the consideration of the General Assembly.

C. Concluding remarks by the Co-Chairs

1. General concluding remarks

71. At the sixth meeting of the Study Group, the Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) delivered concluding remarks in light of the comments that had been expressed by its members during the previous meetings.

72. The Co-Chairs expressed their gratitude to the members of the Study Group for their contributions and comments on the second issues paper. While the paper was considered a good basis for future discussions, some additional information was required on the practice of States and international organizations, especially in Africa, Asia and Latin America and the Caribbean. The Co-Chairs indicated that, while scientific findings related to sea-level rise and climate change were not within the Study Group's scope of work, they would endeavour to organize informal meetings with scientists from the Intergovernmental Panel on Climate Change on specific issues of interest.

73. The Co-Chairs further observed that the Study Group's work would continue without prejudice to the outcome of its work, which, according to the syllabus, was a consolidated final report. Any proposals made by members of the Study Group with regard to the future format of its work and outcome would be examined in more detail at a later stage.

2. Statehood

74. The Co-Chair (Mr. Ruda Santolaria) recalled that sea-level rise was a gradual phenomenon that could result in the partial or total loss of a State's territory. Although there

⁴³ Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 14 October 1994), United Nations, *Treaty Series*, vol. 1954, No. 33480, p. 3.

had been no cases of complete inundation of a State's land, certain the small island developing States were likely to become uninhabitable in the future.

75. The Co-Chair noted that the lack of State practice had rendered it necessary to explore historical examples and relevant general principles of law. With regard to the latter, he recalled the principle of the sovereign equality of States, the principle of self-determination of peoples, the principle of international cooperation, and the principle of good faith. While it was acknowledged that the historical analogies of the Holy See and the Order of Malta were not directly related to sea-level rise, they could nonetheless be useful for further work on the topic with respect to the possibility of maintaining international legal personality despite the loss of territory. Likewise, some valuable conclusions could be drawn from cases of Governments being forced into exile for, at least, the immediate aftermath of the disappearance of a State's land territory due to sea-level rise or for when the land territory of a State became uninhabitable despite not being totally covered by the sea.

76. Turning to the criteria of statehood, the Co-Chair reiterated that, although there was no generally accepted notion of a "State", the criteria of the Convention on the Rights and Duties of States could constitute a starting point for the Study Group's work. He noted the position expressed by members of the Study Group that there was a difference between criteria for the creation of a State and those for its continued existence. Some reflections on the criteria of territory and permanent population were provided.

77. The Co-Chair noted that the presumption of continuity of a State was also a starting point for further work. At the same time, he emphasized the need to consider the practical implications of maintaining that presumption despite serious changes to a State's territory and its population. Relatedly, the right of a State to ensure its preservation required further reflection. The importance of preserving the right to self-determination of the affected populations was also highlighted.

3. Protection of persons affected by sea-level rise

78. The Co-Chair (Ms. Galvão Teles) recalled that there was no specific legal framework that provided for a distinct legal status of persons affected by sea-level rise. Existing universal and regional legal frameworks, including human rights law, refugee and migration law, and disaster and climate change law, required additional study with a view to evaluating their applicability in the sea-level rise context. The Co-Chair noted the relevant emerging practice of States, international organizations and other relevant entities, both direct and indirect, and of the need to continue examining its development for the purpose of identifying principles applicable to the protection of persons affected by sea-level rise.

79. The Co-Chair observed that, in line with the proposals made by some members, the Study Group should refer in its work to previous outcomes of the Commission's work, in particular, but not limited to, the draft articles on the protection of persons in the event of disasters. The Co-Chair also recalled that members of the Study Group were welcome to provide individual written contributions on any of the guiding questions.

D. Issues for further work on the subtopics of statehood and the protection of persons affected by sea-level rise

80. Based on the discussions in the Study Group during the first part of the session, the Co-Chairs made the following proposals regarding the continuation of its work on the subtopics, without prejudice to the possibility of further examining other issues as appropriate.

1. Statehood

81. The Co-Chair (Mr. Ruda Santolaria) proposed that the Study Group request the Secretariat to undertake a study of the relevant previous work of the Commission, with a view to assessing its relevance to the subtopic. He emphasized the need for collaboration with entities and institutions from different regions of the world in order to ensure diversity and representativeness, especially regarding the practice in regions for which less information

was available, such as Latin America and the Caribbean, Asia and the Pacific and Africa. He proposed the following tasks to complement the second issues paper with respect to the subtopic of statehood, taking into account the exchange of opinions among members of the Study Group, in the context of the analysis of the sea-level rise in relation to statehood:

(a) an evaluation of the way in which the requirements for the configuration of a State as a person or subject of international law had been interpreted, taking the Convention on Rights and Duties of States as a starting point, and including references to the practice of the General Assembly and the Security Council of the United Nations; and an analysis of any differences between the criteria for the creation of a State and those for the continuity of its existence;

(b) an analysis of the territory, including the different spaces under the sovereignty of the State and the maritime zones under its jurisdiction, and the nature of the land surface that could become submerged as a consequence of sea-level rise;

(c) a presentation of the possible legal effects of the maintenance or the eventual loss of statehood, and of the eventual maintenance of some form of international legal personality, in the context of the different scenarios resulting from sea-level rise; and an analysis of the pertinence of the presumption of statehood in the case of States affected by sea-level rise, and of the ways in which self-determination could be exercised by the affected populations and whether certain principles of general international law could be applied in such cases. Given the progressive nature of sea-level rise, it would be important to distinguish between two situations and the potential effects thereof: one, closer in time, in which the land surface of a State was not completely covered by the sea, but could become uninhabitable; and the other, in which the land surface of a State could become completely covered by the sea. Without prejudice to the specificities of each subtopic in the analysis, the interplay between the different assumptions or scenarios in relation to statehood and their eventual implications for the protection of persons and their rights should be reinforced;

(d) a reflection on the right of a State affected by sea-level rise to seek its conservation, the modalities to be used for that purpose and the significance of international cooperation to that effect;

(e) a careful and prudent analysis of the various options set out in the second issues paper, taking into account the possibility of creating *sui generis* legal regimes or proposing practical alternatives based on agreements between States or instruments in relation to the phenomenon of sea-level rise that could be adopted within the framework of international organizations, especially in the context of the United Nations system.

2. Protection of persons affected by sea-level rise

82. The Co-Chair (Ms. Galvão Teles) proposed that the Study Group request the Secretariat to undertake a study of the relevant previous work of the Commission, with a view to assessing its relevance to the subtopic. She encouraged members of the Study Group to prepare papers on relevant international and regional practice, and on the guiding questions contained in paragraph 435 of the second issues paper. She emphasized the need to establish and maintain contacts with relevant expert bodies and international organizations. Lastly, the Co-Chair listed the following points that she intended to further examine to complement the second issues paper with respect to the subtopic of protection of persons affected by sea-level rise taking into account the exchange of views among the members of the Study Group:

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

(b) the combination of the needs-based and rights-based approaches as the basis for the legal analysis of the protection of persons affected by sea-level rise;

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

(d) identification of the scope of the obligations of human rights duty bearers in the context of sea-level rise;

- (e) the protection of persons in vulnerable situations in the context of sea-level rise;
- (f) the relevance of the principle of *non-refoulement* in the context of the protection of persons affected by sea-level rise;
- (g) the implications of the Global Compact for Safe, Orderly and Regular Migration and other soft-law instruments in terms of the protection of persons affected by sea-level rise;
- (h) the application of subsidiary and temporary protection to persons affected by sea-level rise;
- (i) the relevance of humanitarian visas and similar administrative policies for the protection of persons affected by sea-level rise;
- (j) tools for the avoidance of statelessness in the context of sea-level rise;
- (k) the content of the principle of international cooperation, including institutional paths for inter-State, regional and international cooperation regarding the protection of persons affected by sea-level rise.

III. Future work of the Study Group

83. In the next quinquennium, the Study Group will revert to the subtopic of the law of the sea in 2023 and to the subtopics of statehood and the protection of persons affected by sea-level rise in 2024. In 2025, the Study Group will then seek to finalize a substantive report on the topic as a whole by consolidating the results of the work undertaken.
