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## Sixth Committee

### Summary record of the 13th meeting

Held at Headquarters, New York, on Thursday, 5 November 2020, at 10 a.m.

*Chair:* Ms. Weiss Ma'udi (Vice-Chair) ..... (Israel)

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*In the absence of Mr. Skoknic Tapia (Chile), Ms. Weiss Ma'udi (Israel), Vice-Chair, took the Chair.*

*The meeting was called to order at 10 a.m.*

### **Agenda item 80: Report of the International Law Commission on the work of its seventy-second session**

1. **The Chair** said that the General Assembly, in paragraph (a) of its decision 74/566, had decided to postpone the seventy-second session of the International Law Commission in light of the ongoing coronavirus disease (COVID-19) pandemic. Accordingly, there was no annual report of the Commission for the Committee to consider. In paragraph (d) of the decision, however, the General Assembly had requested the Commission and the Secretariat to report on the implementation of paragraph (b) of the decision, in which it had urged the Commission, inter alia, to further explore means to make progress on the topics in its programme of work in the absence of a formal in-person session of the Commission in 2020, and of paragraph (c), in which it had requested the Secretariat to explore and prepare options to enable the Commission to effectively conduct sessions remotely, or otherwise make progress in its work remotely.

2. **Mr. Hmoud** (Chair-designate of the International Law Commission), speaking via video link from Singapore and reporting in accordance with paragraph (d) of General Assembly decision 74/566 on the matters referred to in paragraph (b) thereof, said that, pursuant to that decision, the Commission had not held a session in 2020. Although the Commission as such could not make formal progress in its work during the intersessional period, its members in their individual capacities frequently interacted informally between sessions in order to exchange ideas and improve their understanding of the topics under consideration. They consulted with one another and with academic institutions and expert bodies in various ways: in person, through workshops, in virtual meetings, via email, in writing or by telephone.

3. Moreover, the detail and complexity of the legal issues addressed by the Commission, and the thoroughness with which they were researched and considered, were such as to require considerable preparation in advance of the sessions. The Special Rapporteurs and the Co-Chairs of the Study Group on sea-level rise in relation to international law, in particular, had spent several months researching, drafting and preparing their reports and issues paper. Other members of the Commission had also spent significant time preparing for the session, digesting and analysing the documents, conducting their own

research, and preparing their views for presentation before the Commission. It was perhaps not common knowledge that members of the Commission worked on a part-time basis and were unremunerated; they were academics, private or governmental legal practitioners, judges and current or retired diplomats or other government officials, and they carried out intersessional preparatory and informal work in their private time.

4. While it was a standard working method of the Commission to make progress on the topics in its programme of work informally during the intersessional period, in fulfilment of paragraph (b) of decision 74/566, it could make formal progress on those topics only during its formal deliberations. Whatever informal progress was made between sessions needed to be brought before the Commission in order to be placed on the record, in the six languages of the United Nations, to form part of the formal proceedings of the Commission.

5. The Bureau-designate had held numerous virtual meetings since March 2020 to consider questions relating to the postponement of the seventy-second session, to keep the members of the Commission informed and consulted, and to coordinate options for members to engage in informal intersessional work. Members of the Secretariat had organized and participated in those meetings.

6. From early March to September 2020, the Chair for the seventy-first session and himself, as Chair-designate for the seventy-second session, had convened multiple virtual meetings of the Bureau-designate. In March, the focus had been on the need to postpone the first part of the seventy-second session, taking into account advice from the Secretariat and from the United Nations Office at Geneva. Further to those meetings, the Commission had written to the President of the General Assembly on 16 March 2020 recommending that the first part of the seventy-second session be postponed to the earliest date possible, and that an additional week be added to the second part of that session.

7. In April and May, the question had been whether it would be possible to hold the second part of the session as planned. Taking into account information received from the Secretariat and the United Nations Office at Geneva, and in accordance with the unanimous view of its members, the Commission had again written to the President of the General Assembly on 30 May recommending that the seventy-second session be postponed to 2021 and the seventy-third session to 2022, and that the term of office of the current members be extended by one year. On 15 June, the Chair for the seventy-first session and himself, along with the other

members of the Bureau-designate, had briefed the Sixth Committee during virtual consultations chaired by the Chair of the Sixth Committee for its seventy-fourth session.

8. From June to September 2020, the Bureau-designate had continued to hold virtual meetings to keep abreast of the Committee's discussions concerning the question of postponing the seventy-second session of the Commission, and also to share information and consider the options for informal work in lieu of the scheduled session. On 19 August, the Bureau-designate had convened a virtual meeting of the enlarged Bureau-designate, comprising the five members of the Bureau-designate, the Special Rapporteurs of the Commission and one of the Co-Chairs of the Study Group. The Co-Chairs had provided an update on the informal written consultations they had undertaken since the preparation of the first issues paper on sea-level rise in relation to international law (A/CN.4/740), and on their plans, including the possibility of holding virtual informal consultations.

9. On 3 September 2020, a virtual meeting of all members of the Commission had been held. Participants had received an update regarding the activities of the Bureau-designate, the content of General Assembly decision 74/566 and the intentions of the Special Rapporteurs and the Co-Chairs. Statements, which could be found on the website of the Commission, had been made in tribute to Mr. Alexander Yankov of Bulgaria, a former member of the Commission who had died in October 2019. In addition to those meetings, members had engaged in informal exchanges, including on possible topics for the long-term programme of work. He was confident that such exchanges would continue until the next session of the Commission, which was scheduled to begin in Geneva on 26 April 2021. The informal progress thus made would be incorporated, as appropriate, into the formal proceedings of the Commission.

10. **Mr. Llewellyn** (Secretary of the International Law Commission), reporting in accordance with paragraph (d) of General Assembly decision 74/566 on the matters referred to in paragraph (c) thereof, said that, in addition to organizing and participating in a considerable number of virtual meetings of the Commission since March 2020, the Secretariat had been exploring all available options for working methods in the event that an in-person session of the Commission were not possible in 2021.

11. The first option was to postpone the session to a later date in 2021. The Secretariat had been in regular contact with the United Nations Office at Geneva regarding that possibility. If an in-person session were

indeed possible, it would likely be subject to the COVID-19 mitigation measures that currently applied: physical distancing and the wearing of face coverings would be required, and a sufficiently large room would be needed so that the 34 members of the Commission could be seated at a distance of at least two metres from one other. No reduction in the number of meetings was envisaged.

12. The second option was to meet remotely. For virtual informal meetings without simultaneous interpretation, the Secretariat had successfully been using the Webex platform. For virtual meetings with simultaneous interpretation into the six official languages of the United Nations, which accounted for almost all meetings of the Commission, the Secretariat had access to the Interprefy platform in New York and to other authorized virtual platforms in Geneva. In the event that in-person meetings were not possible, the Commission therefore expected to use one of those platforms.

13. However, virtual meetings with interpretation were limited to a duration of two hours, and the Commission's session would have to be reduced accordingly. The meetings of the Drafting Committee, which were critical to the formulation of the texts that comprised the Commission's outputs, would be particularly difficult to conduct by virtual means. In normal circumstances, those meetings consisted of close, face-to-face detailed dialogue among a relatively small group, in which the text under deliberation developed very rapidly. Informal conversations in the margins of the meeting could be an essential element in the deliberations.

14. Moreover, the locations of the members of the Commission spanned 16 time zones, something that would significantly limit the times at which virtual meetings could feasibly be held. Creative solutions, such as written exchanges of views, would need to be considered, and the question of how to provide summary records of such exchanges would need to be resolved. Managing Interprefy and similar platforms also entailed a considerable burden that would require additional staff. Such challenging tasks were not part of the prior experience or normal skill set of Codification Division staff.

15. A third option, if only some members were able to attend in person, would be to convene a hybrid session. In that event, the Commission would need to manage both the issues regarding virtual meetings and the limitations on in-person meetings. The Secretariat would remain in close contact with the Chair-designate and the Bureau-designate over the following months in

order to ensure that the Commission could make informed decisions about the possibilities for holding the seventy-second session.

16. A more detailed statement would be made available in the eStatements section of the *Journal of the United Nations*.

17. **Mr. Kabba** (Sierra Leone), speaking on behalf of the Group of African States, said that the Group appreciated the work done by members of the Commission within the previous 12 months and was grateful to the Codification Division for having briefed the Committee on 3 September 2020, and for its indispensable assistance in the consultations leading up to General Assembly decision 74/566. That decision was an exceptional one, owing to the unprecedented circumstances arising from the pandemic. It was also without prejudice to article 10 of the statute of the Commission and did not constitute a precedent for the Commission or for other bodies of the United Nations with elected members. Moreover, the decision did not affect the date for elections of members for the following quinquennium; the Group fully endorsed the content of the letter dated 17 August 2020 from the Chair of the Committee for the seventy-fourth session concerning the holding of elections for the following quinquennium on the anticipated date in November 2021. The Group therefore noted with appreciation the communication from the Legal Counsel on behalf of the Secretary-General dated 23 October 2020.

18. The Group attached great importance to the mandate of the Commission to promote the progressive development of international law and its codification. When considering legal provisions, State practice, precedents and doctrine in accordance with its statute, the Commission should always take an inclusive and all-embracing approach. It should draw inspiration from the principal legal systems of the world, including African customary law. The Group's increasing engagement with the work of the Commission was intended to ensure that those important aspects of its work were duly fulfilled. The Group was committed to multilateralism and the rules-based international legal system, and it valued the effective contribution of the Commission to the maintenance of the multilateral system, taking into account the views of all Member States.

19. The Group appreciated the extension, from 1 December 2020 to 30 June 2021, of the deadline for States to submit comments and observations concerning the draft conclusions on peremptory norms of general international law (*jus cogens*) and the draft principles on protection of the environment in relation to armed conflicts.

20. With regard to effective geographical representation in the work of the Commission, the Group noted that only one African member was currently serving as Special Rapporteur, and another as Co-Chair of a Study Group. It called on the Commission, when deciding to add new topics, to consider a balanced approach in terms of interest as well as in the selection of Special Rapporteurs. Such action could help to enhance the legitimacy of the Commission's work.

21. **Mr. Laloni** (Tuvalu), speaking on behalf of the Pacific Islands Forum, said that the Forum was determined to make a collective effort towards developing international law in order to ensure that once the maritime zones of its members had been delineated in accordance with the United Nations Convention on the Law of the Sea, they could not be challenged or reduced as a result of sea-level rise and climate change. The members of the Forum were committed to negotiating all outstanding boundary claims and preserving members' existing rights stemming from maritime zones. They were deeply grateful to the Commission for heeding their call to examine the implications of sea-level rise as a matter of the utmost urgency, and were pleased that the Co-Chairs of the Study Group on sea-level rise in relation to international law had been able to produce their first issues paper (A/CN.4/740), despite the disruption created by the pandemic. The paper provided an excellent basis to address the Forum's concerns, including by acknowledging the overarching need to preserve legal stability, security, certainty and predictability, in accordance with the general purpose of the United Nations Convention on the Law of the Sea, as reflected in its preamble. The carefully balanced and equitable package of rights and responsibilities underpinned by the Convention must be maintained.

22. The practice of many States in the Pacific region and elsewhere demonstrated their interest in preserving the stability of their baselines and the outer limits of the maritime zones measured therefrom. Over time, that practice might contribute to the development of a rule of customary international law on the topic. The Forum therefore welcomed the preliminary conclusion set out in paragraph 104 of the issues paper that the Convention did not exclude an approach based on the preservation of baselines and outer limits of maritime zones once notifications had been deposited with the Secretary-General. The Forum also concurred with the authors' observation in paragraph 119 that States could not invoke article 62, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties in order to

unilaterally terminate or withdraw from a maritime boundary treaty, including because of sea-level rise.

23. International jurisprudence also reflected the need to preserve existing delimitations effected by agreement or adjudication, notwithstanding coastal changes owing to sea-level rise. Moreover, international law should, in principle, not cause further harm to populations already affected by climate change. The response of international law to sea-level rise should, instead, take into account the interests of those parties that were specifically affected, particularly small island developing States, which faced substantial, if not existential, exposure to climate change despite bearing the least responsibility for its causes. Sea-level rise thus should not cause the loss of existing maritime entitlements or of sovereign rights and jurisdiction. Any changes to such rights would carry a risk of uncertainty, instability and possible disputes.

24. **Ms. Young** (Belize), speaking on behalf of the Alliance of Small Island States, said that the Alliance was grateful to the Commission for its work over the previous year, particularly on the topic of sea-level rise in relation to international law. The Alliance comprised 39 small island and low-lying developing States whose fishing, tourism and transportation industries relied heavily on the maritime zones allocated to them under the United Nations Convention on the Law of the Sea. Rising sea levels threatened their physical structures, economies, food security, health and education prospects, and even their unique cultures and livelihoods. When the Convention had been drafted, radical and relentless change to the oceans had not been contemplated; States had been as likely to gain territory through accretion as they had been to lose it through erosion or avulsion.

25. The Alliance therefore agreed with the authors of the first issues paper (A/C.4/740) that nothing prevented Member States from depositing notifications, in accordance with the Convention, regarding the baselines and outer limits of maritime zones measured from the baselines and, after the negative effects of sea-level rise occurred, to stop updating those notifications in order to preserve their entitlements. The Alliance also agreed that an approach that responded adequately to the need to preserve legal stability, security, certainty and predictability was one based on the preservation of baselines and outer limits of maritime zones measured therefrom, as well as of the entitlements of the coastal State.

26. Moreover, a body of State practice was developing regarding the preservation of maritime zones and the resulting entitlements. Many small island and low-lying States had taken political and legislative measures to

preserve their baselines and the existing extent of their maritime zones by adopting domestic laws, concluding maritime boundary agreements and depositing charts or coordinates along with declarations. Such recent State practice, which had formed in the context of climate change and consistently rising sea levels, should be most relevant to the consideration of the Study Group.

27. That State practice was relevant for two main reasons. Firstly, the Vienna Convention on the Law of Treaties allowed for the consideration of any subsequent practice in the application of the treaty which established the agreement of the parties regarding its interpretation. That was especially true when a treaty was silent on an issue, as the Convention was with regard to the requirement to update coordinates or charts. Such State practice was the basis for the Co-Chairs' observation that, in order to preserve maritime zones and the resulting entitlements, States parties were not obligated to update their coordinates or charts once deposited. Secondly, while not all States were parties to the Convention, State practice combined with *opinio juris* was evidence of customary international law. Although there might not yet be sufficient State practice and *opinio juris* to conclude that a general customary rule existed, the Alliance believed that the trend was in that direction. The absence of such a rule did not, in any event, have an effect on the interpretation of the Convention based on the subsequent practice of States parties thereto.

28. The Alliance encouraged the Commission to continue to consider the perspectives of small island and low-lying States, which had placed their faith in the equalizing role of international law. Only by doing so would the Commission be able to find legal solutions that responded effectively, and fairly, to the challenges of sea-level rise.

29. **Mr. Khng** (Singapore) said that his delegation recognized that the situation created by the pandemic had required extraordinary measures, including postponing the seventy-second session of the Commission. However, far from being diminished, the importance of the rule of law was enhanced in times of crisis. It was therefore critical that institutions whose work was central to the continual strengthening and maintenance of the rule of law at the international level be able to find ways to continue their work to the extent possible. As the body responsible for the progressive development of international law and its codification, the Commission was such an institution. Accordingly, his delegation appreciated the work done by the Commission during the extended intersessional period and strongly encouraged it to continue to explore ways

of adapting its working methods including, if necessary, by meeting remotely.

30. **Mr. Simonoff** (United States of America) said that his delegation looked forward to submitting written comments and observations concerning the draft conclusions on peremptory norms of general international law (*jus cogens*) and the draft principles on protection of the environment in relation to armed conflicts. It urged members of the Commission to take those comments fully into account as they revised their output. It had read with interest the reports drafted in early 2020 by the Special Rapporteurs and by the Co-Chairs of the Study Group on sea-level rise. It would not comment on those documents at the current session, because the Commission as a whole had not yet had the opportunity to consider them. That silence should not, however, be understood as indicative of its position on any specific aspect of the reports.

31. His delegation appreciated the difficulty faced by the Commission in conducting its business during the pandemic and the complications arising from virtual meetings. It trusted the Commission's assessment of what progress could be made on its substantive projects until it reconvened in Geneva.

32. As several delegations had pointed out in previous years, there was some confusion regarding the range of the Commission's outputs, which had, over the previous two decades, included draft articles, principles, conclusions, guides and guidelines. The precise difference between some of those categories was not readily apparent. Even when the same framework was adopted for multiple projects, the format and content of the final products varied significantly. Some recent products styled as draft principles or conclusions included material more appropriate for draft articles, such as binding wording and dispute resolution clauses. His delegation therefore proposed that the Commission consider drafting a practice guide for the selection of the framework of its work products. In that practice guide, details could be provided regarding the selection of a particular framework, the types of provisions that might be included within that framework, and what might be the legal implications, if any. As that task was procedural in nature, it should be possible to conduct it remotely.

33. **Ms. Flores Soto** (El Salvador) said that, despite the constraints arising from the pandemic, the Commission had made every endeavour to adjust its work methods and ensure that some of its members were able to participate actively in discussions concerning the role of international law. The side event entitled "Pandemics and international law", held on 16 October

2020 in the margins of the current session of the General Assembly, was a case in point. On that occasion, participants had highlighted the need for a broad focus that would encompass legal questions that might arise in various areas of international law owing to the effects of pandemics on all areas of human activity. In such unprecedented circumstances, it was particularly important to strengthen cooperation between the Commission and the Committee in order to provide answers to current challenges.

34. **Mr. Kanu** (Sierra Leone) said that his delegation commended all the members of the Commission for their dedication to their mission, despite the challenges arising from the pandemic. It therefore welcomed the events organized to mark International Law Day on 26 October 2020 and the informal virtual briefing held on 28 October. It was particularly grateful to the Special Rapporteurs and the Co-Chairs of the Study Group on sea-level rise who, despite the disruption, had submitted timely reports on their respective topics. It also appreciated the six-month extension granted to Member States for the submission of comments and observations concerning the draft conclusions on peremptory norms of general international law (*jus cogens*) and the draft principles on protection of the environment in relation to armed conflicts. His delegation hoped that all States, particularly members of the Group of African States, would provide such feedback.

35. His delegation supported the goal to convene the seventy-second session of the Commission in Geneva in April 2021. However, given the risk of a potentially devastating second wave of the pandemic, it was critical to ensure that contingency plans were in place. The International Court of Justice and many other subsidiary bodies and organs of the United Nations, including the Sixth Committee, had used information and communications technology to make progress in their work. While understanding that the Commission's work had some unique features, his delegation was confident that, with some flexibility and creativity, the Commission could be successful in doing the same. Such options might include using virtual multilingual videoconferencing platforms, adjusting to the normal scheduling of meetings, exchanging of plenary debate statements in writing, holding Drafting Committee meetings by virtual means, adopting texts using the no-objection procedure, and taking decisions on a provisional basis pending a formal meeting.

36. His delegation hoped that, when deciding which topics should be added to its programme of work, the Commission would give priority to the topics that had strong support from Member States and that represented the main forms of civilization and the principal legal

systems of the world. In so doing, the Commission would help to enhance the global representativeness and legitimacy of its work. When selecting new topics, the Commission should focus on their usefulness to the international community and seek to improve the balance between traditional topics and newer, more pressing issues. For example, the Commission might seek to harmonize the disparate legal regimes that could be affected by future pandemics. His delegation was therefore pleased to have been one of the sponsors of the recent side event on pandemics and international law.

37. **Mr. Sarufa** (Papua New Guinea) said that his delegation agreed with several of the points made in the first issues paper on sea-level rise in relation to international law (A/CN.4/740), including that the United Nations Convention on the Law of the Sea did not indicate that new baselines must be drawn, recognized or notified by the coastal State when coastal conditions changed; that the Convention did not prohibit the preservation of baselines and outer limits of maritime zones measured therefrom; and that the ambulatory theory regarding baselines and the limits of maritime zones measured from them did not respond to, *inter alia*, the need to preserve legal stability, security, certainty and predictability. His delegation also appreciated the contribution of two Co-Chairs of the Study Group to the virtual regional conference of the Pacific Islands Forum, held from 8 to 11 September 2020, on the topic “Securing the limits of the Blue Pacific: legal options and institutional responses to the impacts of sea-level rise on baselines, in the context of international law”.

38. As an archipelagic State made up of over 600 islands, Papua New Guinea had based its sustainable development efforts on its maritime zones guaranteed under the Convention, to which it was a party. However, those plans were now being jeopardized by sea-level rise and climate change. It was therefore essential to preserve the legal stability, security, certainty and predictability of the country’s maritime zones, including its archipelagic waters. Jurisdictional uncertainty could cause enforcement issues and create potential for conflict in the region. His delegation therefore welcomed the emphasis in the issues paper on the need to preserve legal stability, security, certainty and predictability. Furthermore, it believed that the rights and interests with respect to archipelagic waters, including sea lanes and air routes, were carefully balanced in part IV of the Convention.

39. Through the 2050 Strategy for the Blue Pacific Continent, the Pacific Islands Forum sought to respond to threats and maximize opportunities to secure a viable future for the Pacific region. The three subtopics

identified by the Study Group, namely 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, raised important questions in that regard. His delegation supported the Study Group’s efforts to make progress in its work during the current complex and challenging times.

40. **Mr. Skachkov** (Russian Federation) said that the Commission had made an invaluable contribution to the development of international law. States were bound by obligations arising from international agreements that were based on the Commission’s output, and legal scholars and practitioners around the world used the Commission’s authoritative research. In view of the COVID-19 pandemic, his delegation had supported the adoption of decision 74/566, in which the General Assembly decided to postpone the Commission’s seventy-second session and to extend the terms of office of its current members. The traditional in-person working method of the Commission, which enabled representatives of different legal systems to gather in Geneva in order to better understand each other, avail themselves of the outstanding library there, and to take the time necessary, without politicization or needless haste, to develop draft conventions, recommendations and guiding principles, was of the utmost importance and should be preserved.

41. **Mr. Hernandez Chavez** (Chile) said that his delegation had supported General Assembly decisions 74/545, 74/559 and 74/566, which had been adopted with due regard for the Commission’s recommendations. The COVID-19 pandemic had affected the work of both the Committee and the Commission, causing them to consider special working methods in order to continue doing their work. The procedural questions surrounding the need for special working methods should not, however, distract the Committee or the Commission from continuing to promote the progressive development of international law and its codification and, in particular, identifying future topics relevant to Member States.

42. Mindful of the role of Member States in suggesting such topics, his delegation had sponsored the recent side event on pandemics and international law. On that occasion, five members of the Commission had extensively discussed legal issues stemming from the pandemic. The panellists had agreed that the implications of the pandemic went beyond health policy or the role of the World Health Organization; they encompassed virtually every aspect of life and numerous areas of international law, including peace and security, international trade, labour law, international environmental law, intellectual property law, international

maritime and aviation law, and human rights law. The panellists had highlighted the need for an exhaustive study of those issues and for international law to develop accordingly. His delegation stood ready to play a role in that process, without prejudice to any decisions that might be taken by the Commission.

43. **Mr. Hawke** (New Zealand) said that his delegation was grateful to all members of the Commission for exploring ways to make progress while in-person meetings were not possible. It was ready to support the Commission by ensuring it had the necessary tools and resources, in whatever manner it considered would be most productive.

44. The maritime zones guaranteed under the United Nations Convention on the Law of the Sea represented a pathway to development for many countries in the Pacific region. The first issues paper on sea-level rise in relation to international law (A/CN.4/740) provided a valuable and thorough consideration of pertinent issues and of existing State practice. His delegation agreed with the authors of the paper that the principles of stability, certainty, justice and equity, good faith, reciprocity and the duty of States to cooperate, which underpinned the Convention, were all relevant to the issue of sea-level rise and international law. His delegation urged States to submit their comments and observations to the Commission and to continue discussing the issue in parallel with the Commission's work.

45. New Zealand welcomed the third report of the Special Rapporteur on succession of States in respect of State responsibility (A/CN.4/731), particularly its focus on the application of different forms of reparation, and the sixth report of the Special Rapporteur on provisional application of treaties (A/CN.4/738), containing updated guidelines and analysis concerning the rights and obligations resulting from the provisional application of a treaty. With regard to the eighth report of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction (A/CN.4/739), his delegation believed that it was critical to ensure that the draft articles on the topic reflected the substantive strides made in the area of international criminal law.

46. A more detailed version of his statement could be found in the eStatements section of the *Journal of the United Nations*.

47. **Mr. Kawase** (Japan) said that, in view of the need for close cooperation between the Committee and the Commission, his delegation hoped that the postponement of the seventy-second session of the Commission, while unfortunate, would provide an

opportunity for a more thorough review of the Special Rapporteurs' reports.

48. In recent years, the output of the Commission had often taken the form of draft conclusions or draft principles whose normative implications were not always clear. His delegation hoped that the Commission would, following thorough discussion, clarify those implications, and that elections for membership of the Commission would take place as planned in 2021.

49. **Ms. Quyen Thi Hong Nguyen** (Viet Nam) said that, although there was no formal report to consider, her delegation continued to follow closely the progress of the Commission's work. Accordingly, it had joined the consensus in the adoption of General Assembly decisions 75/545, 75/559 and 75/566. It appreciated the efforts of the members of the Commission to conduct informal work between sessions, although a formal session was necessary in order to allow for direct exchanges among the members. It therefore encouraged the Secretariat to continue to prepare options to enable the Commission to effectively conduct its sessions either remotely or in a hybrid format, including by using technology solutions. Lastly, her delegation hoped that the Commission would continue to improve its methods of work.

50. **Mr. Prasad** (Fiji), speaking on behalf of the Pacific small island developing States, said that the first issues paper on sea-level rise in relation to international law (A/CN.4/740) would constitute a strong foundation for more in-depth discussions. Owing to salt-water inundation and coastal erosion, the low-lying small island States and atolls in the Pacific region had limited access to fresh water and food supplies. Sea-level rise affected their well-being, livelihoods, infrastructure, economies and development efforts. The Pacific small island developing States had consistently called for recognition of the nexus between climate change and security.

51. The inclusion of the topic of sea-level rise on the programme of work of the Commission thus provided an opportunity to discuss such issues as the regulation of maritime entitlements, the delimitation of maritime zones and the rights of coastal States to an extended continental shelf. Ultimately, it would help to strengthen the international legal framework in the context of the United Nations Convention on the Law of the Sea. The Pacific small island developing States were committed to developing international law so as to ensure that their maritime zones, as delineated in accordance with the Convention, could not be challenged or reduced as a result of sea-level rise and climate change. They called

on other Member States to recognize the need to preserve such maritime zones and the entitlements.

52. **Mr. Mulalap** (Federated States of Micronesia) said that his delegation recognized the extraordinary difficulties created by the pandemic and understood the decision to postpone the seventy-second session of the Commission. Although it had yet to be considered by the Commission as a whole, the first issues paper on sea-level rise in relation to international law was already a major achievement, in that it provided an authoritative survey of the implications of sea-level rise for numerous facets of the law of the sea.

53. His delegation agreed with the authors of the paper that the United Nations Convention on the Law of the Sea did not contemplate sea-level rise; did not prevent States from preserving their existing boundaries and maritime zones once deposited with the Secretary-General; and should be applied in such a manner as to foster legal stability, security, certainty and predictability. His delegation appreciated the careful analysis of State practice set out in the paper and supported the preliminary observation that there were increasing examples of such practice, including in the Pacific region, although there was a need to more clearly demonstrate *opinio juris* in order to allow for the identification of a norm of customary international law.

54. Earlier in the year, his Government had deposited with the Secretary-General lists of geographical coordinates of points, accompanied by illustrative maps, for the maritime zones of the Federated States of Micronesia. Along with that lists, it had included observations to the effect that the country was specially affected by sea-level rise and climate change; that it understood that it was not obliged to keep under review the maritime zones reflected in the deposit; and that it intended to maintain those zones in line with that understanding, notwithstanding climate change-induced sea-level rise. His delegation urged other States to consider including similar observations when depositing lists of coordinates, or to transmit them in relation to lists already deposited.

55. **Mr. Shihab** (Maldives) said that, for small island countries with low-lying coasts, the impact of sea-level rise was already a lived reality that needed to be addressed through international law. With that end in mind, the Maldives had hosted the 1989 Small States Conference on Sea Level Rise, culminating in the signing of the Malé Declaration on Global Warming and Sea Level Rise, which in turn had been instrumental in the founding of the Alliance of Small Island States and the negotiation of the United Nations Framework Convention on Climate Change. The Maldives had

continued to engage extensively on the issue with the General Assembly, the Human Rights Council, the United Nations Framework Convention on Climate Change and, most recently, the Commission.

56. At the domestic level, his Government had built sea walls and revetments and undertaken beach replenishment. Such artificial measures to preserve coastal areas, islands and baselines could not, however, be a sustainable solution for developing States; they were extremely costly, and the pandemic had caused a further strain on national budgets. Furthermore, many developing countries were not in a financial position to fortify their coasts. It was therefore essential for the international community to pursue a progressive legal solution to sea-level rise.

57. His delegation interpreted the United Nations Convention on the Law of the Sea to mean that, once a State deposited the appropriate charts and/or geographic coordinates with the Secretary-General, those entitlements were fixed and would not be altered by any subsequent physical changes to the State's geography as a result of sea-level rise. In the interests of stability, certainty, fairness and equity, baselines and maritime entitlements should remain consistent. His delegation agreed with the authors of the first issues paper on sea-level rise in relation to international law ([A/CN.4/740](#)) that States were not prohibited under the Convention from maintaining previously established baselines and the other limits of maritime zones measured therefrom, in order to preserve their maritime entitlements.

58. His delegation also agreed with the authors that there was State practice referring to freezing baselines and outer limits of maritime zones and increasing *opinio juris* concerning those maritime entitlements. While that trend had been identified in the issues paper, a mature customary international law on the preservation of baselines had yet to be recognized. His delegation therefore encouraged other Member States to engage further with the Study Group and provide examples of relevant State practice.

59. **Mr. Tōnē** (Tonga) said that the accelerated rate of sea-level rise posed a threat to the inherent birth right of Pacific States, whose leaders had been pressing for climate action for at least 30 years. His delegation believed that once the baselines that determined territorial boundaries had been established under the United Nations Convention on the Law of the Sea, they should remain unchanged, notwithstanding any ensuing sea-level rise or modification related to climate change. His delegation appreciated, and would continue to support, the Commission's endeavour to address such concerns.

60. **Ms. Ozgul Bilman** (Turkey) said that, while it had unfortunately been necessary to postpone the seventy-second session of the Commission, it was imperative to preserve the highly technical, complex and interactive deliberations that were key to the Commission's work. Her delegation had been pleased to hear of the dedicated efforts that had been made for that purpose. It had appreciated the opportunity to engage informally with the members of the Commission on their ongoing work, particularly on the topic of sea-level rise in relation to international law.

61. The pandemic had highlighted the urgent need to strengthen multilateralism. Member States and all other stakeholders should examine ways to strengthen international law and its implementation with a view to ensuring that their response to future pandemics would be more effective, coherent and coordinated. The side event on pandemics and international law, which her delegation had sponsored, had given rise to thought-provoking questions and ideas in that regard.

62. **Mr. Mavroyiannis** (Cyprus) said that it was important to continue discussing and reflecting on the vital role of the Commission in the progressive development of international law and its codification. His delegation was grateful to the members of the Commission for their commitment and called on them to continue working to complete the consideration of the topics on the programme of work for the seventy-second and seventy-third sessions that were at an advanced stage. It had appreciated the opportunity to interact informally with members of the Commission on issues to which it attached particular importance. Its positions on those issues remained consistent with those expressed at previous sessions.

63. While acknowledging that the development of general international law over the previous seventy years had to a great extent been achieved, directly or indirectly, as a result of the Commission's efforts, his delegation believed that the programme of work for the following decade could be enriched with new, topical issues and with innovative working methods that would ensure the fulfilment of the Commission's mandate in all circumstances. Moreover, the Commission could do more to clarify the definition and scope of important concepts that pertained to customary international law or were enshrined in treaties.

64. **Ms. Townsend** (United Kingdom) said that her delegation commended the Commission for its efforts and the Secretariat for steering the work of the Commission through the pandemic and engaging with States on how best to proceed. The United Kingdom was proud to have been closely involved in the foundation of

the United Nations and remained committed to an international order based on international law, with the Charter of the United Nations at its apex. It was vital to ensure that international law kept pace with such developments as the pandemic, climate change and the risk posed by new technologies. The Commission had an important role to play in meeting that challenge through the progressive development of international law and its codification. Her delegation welcomed the selection and consideration of practical topics that were of international concern and required rigorous analysis and debate.

65. **Mr. Amaral Alves De Carvalho** (Portugal) said that the Commission had, throughout its history, contributed to the success of the United Nations as the cornerstone of a multilateral order based on international law. The postponement of the seventy-second session, while regrettable, would help to protect the members of the Commission and the staff assisting them and ensure that conditions were established to enable the Commission to tackle its intense programme of work. The numerous difficulties that had arisen in 2020 had not prevented the Commission from making progress, where possible, by using technology and other means to assist in its work, including by holding informal meetings. His delegation was grateful to the Special Rapporteurs and the Co-Chairs of the study group for their presentations at the virtual informal session of 28 October 2020. It welcomed the extension of the deadline for the submission of comments and observations on certain topics, and was confident that the Commission would use all available means to mitigate the delay in its work.

66. **Ms. Hyunseung Lee** (Republic of Korea) said that her delegation appreciated the work done by the Special Rapporteurs, the members of the Commission and the Codification Division over the previous year. It had engaged actively with the work of the Commission, and therefore welcomed its efforts, along with those of the Secretariat, to promote dialogue with the Committee. The virtual interactive meeting of 28 October had provided an excellent opportunity for such dialogue.

67. The programme of work of the Commission increasingly extended beyond general international law to include such sectors as environmental law, criminal law and human rights law. Her delegation hoped that such concepts would be considered from an interdisciplinary standpoint and would further enhance collaboration in relevant sectors. It took note of the first issues paper on sea-level rise in relation to international law and looked forward to the next steps, including the examination of issues related to statehood and those

related to the protection of persons affected by sea-level rise.

68. Although the pandemic had negatively affected the work of the Commission, it had also served as a reminder of the crucial role of normative instruments in maintaining global peace, security and prosperity. It was important to continue exploring ways to fill normative gaps in order to promote a coordinated response to current and future challenges. Her delegation therefore supported the Commission's efforts to identify topics for inclusion in its long-term programme of work.

69. **Mr. Umasankar** (India) said that, in view of the disruption caused by the pandemic, his delegation was grateful to the Secretariat for its timely briefings and to the members of the Commission for exploring ways to make progress while in-person meetings were not possible. It stood ready to help ensure that the Commission had the necessary tools to fulfil its tasks in whatever manner it deemed most productive.

70. Sea-level rise caused by climate change was expected to result in the submersion of existing land territories, raising complex questions involving sovereignty and access to natural resources, not to mention political, economic and security implications. His delegation therefore looked forward to contributing to discussions on the topic of sea-level rise in relation to international law.

71. **Ms. Margaryan** (Armenia) said that her delegation welcomed the open, transparent and inclusive process in place for the progressive development and codification of international law. That endeavour would help fill new and emerging gaps in the international legal landscape in order to respond to social, economic and political needs, and to reflect the actual practice of States. It was critically important to uphold the rule of law at all times and to preserve legal stability, accountability and predictability, particularly in times of major crisis such as that caused by the pandemic. Effective interaction between the Committee and the Commission played an important role in that process. Her delegation took note of the reports prepared by the Special Rapporteurs and of the extension to the deadline for the submission of comments and observations.

72. **Ms. Mose** (Solomon Islands) said that the ocean was deeply interconnected with the lives and culture of the people of the Solomon Islands, and was the mainstay of its economy and sustainable development. Offshore fishery was the largest income-generating sector, and its continued growth depended on the country's existing maritime zone. A reduction in that zone would have a significant impact on development, particularly at a time

when the country was in the process of graduating from the status of least developed country. Moreover, uncertainty of maritime boundaries would negatively affect sustainable development projects and conservation. For the Solomon Islands, sea-level rise was an existential matter: over half of the population lived within one kilometre of the coast, and five islands had already been lost to rising sea levels.

73. In the United Nations Convention on the Law of the Sea, due consideration was not given to the possibility of rapidly rising sea levels, and customs developed outside of the context of climate change did not help in understanding the obligations enshrined therein. More recent State practice, formed in the context of climate change and consistently rising sea levels, should be most relevant to the consideration of the Study Group. Her delegation believed that maritime boundaries and archipelagic baselines were fixed; once they had been determined in accordance with the Convention and deposited with the Secretary-General, they were not subject to change, notwithstanding sea-level rise. Fixed baselines contributed to the certainty, predictability and stability of maritime boundaries in international law. They ensured fair and equitable results by preserving the existing maritime entitlements on which small island developing States and many other States relied.

74. The stability of maritime boundaries was of great importance to the Solomon Islands and had been reinforced through several boundary treaties with adjacent jurisdictions, including Vanuatu, Papua New Guinea, France and Australia. The country's archipelagic baselines were delineated in accordance with article 47 of the Convention and had been codified in domestic law. Along with the Federated States of Micronesia and Papua New Guinea, the Solomon Islands had made a joint submission pursuant to article 76, paragraph 8, of the Convention establishing the permanent outer limits of the continental shelf. In accordance with international law and regional practice, the Solomon Islands had deposited geographic coordinates for nearly all its maritime zones with the Secretary-General. Those zones were fixed and should not be altered, despite sea-level rise.

*The meeting rose at 12.25 p.m.*