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Summary record of the 19th meeting
Held at Headquarters, New York, on Thursday, 28 October 2021, at 3 p.m.

Chair: Mr. García López (Vice-Chair) . . . . . (Spain)
later: Ms. Al-Thani . . . . . (Qatar)

Contents

21-15646 (E)

In the absence of Ms. Al-Thani (Qatar), Mr. García López (Spain), Vice-Chair, took the Chair.

The meeting was called to order at 3.05 p.m.

Agenda item 176: Observer status for the International Solar Alliance in the General Assembly (*continued*) (A/76/192 and A/76/192/Add.1; A/C.6/76/L.2)

Draft resolution A/C.6/76/L.2: Observer status for the International Solar Alliance in the General Assembly (*continued*)

1. **Mr. LeClerc** (France) said that the following delegations had become sponsors of the draft resolution: Belgium, Eritrea, Norway, Palau, Qatar, Sao Tome and Principe, Sri Lanka and Tunisia. The International Solar Alliance had been established by France and India in 2015. It was open to all Member States and currently represented a substantial portion of the world's population. The aim of the Alliance was to bring clean, affordable and renewable energy within the reach of all, which would contribute to the achievement of Sustainable Development Goal 7, on ensuring access to affordable, reliable, sustainable and modern energy for all, and Goal 13, on taking urgent action to combat climate change and its impacts. The Alliance considered the United Nations and its agencies to be its strategic partners.

2. **Mr. Raguttahalli** (India) said that granting observer status to the International Solar Alliance, which was a treaty-based organization, would reflect the commitment of Member States to renewable energy and usher in a new era of green energy diplomacy. It would also enable the Alliance to provide the Organization with valuable input based on its experience in conducting country programmes, research, public-private cooperation initiatives and global knowledge-sharing activities.

3. *Draft resolution A/C.6/76/L.2 was adopted.*

Agenda item 82: Report of the International Law Commission on the work of its seventy-second session (*continued*) (A/76/10)

4. **The Chair** invited the Committee to continue its consideration of chapters I, II, III, IV, V and X of the report of the International Law Commission on the work of its seventy-second session (A/76/10).

5. **Mr. Nyanid** (Cameroon), referring to the topic "Protection of the atmosphere", said that the future of humanity depended on current and future action to protect the environment of the Earth, the only known habitable planet. Atmospheric pollution was a threat to cultures, ecosystems and human health. With regard to the draft guidelines adopted by the Commission on second reading, his delegation would prefer the following definition of "atmospheric pollution" in draft guideline 1: "the introduction or release by humans, directly or indirectly, into the atmosphere or confined spaces of substances or energy having deleterious effects extending beyond the State of origin of such a nature as to endanger human health, harm living resources and ecosystems, affect climate change, damage material property or cause odour nuisances." It might also be worth considering the definition provided by the Council of Europe in 1968, according to which air was deemed to be polluted when the presence of a foreign substance or a significant variation in the proportion of its components was liable to have a harmful effect or to cause nuisance. Similarly, "atmospheric degradation" should be defined more explicitly as "the alteration by humans, directly or indirectly, of atmospheric phenomena in a meteorological situation at a specific moment in time and at a specific place having significant deleterious effects of such a nature as to endanger human life and health and the Earth's natural environment."

6. In draft guideline 5 (Sustainable utilization of the atmosphere), emphasis should be placed on the long-term reduction of the negative impact of the energy sector on the environment and on the promotion of policies and programmes aimed at increasing the use of environmentally sound and economically profitable energy systems, in particular those based on new and renewable sources. Such efforts should take into account the need for equity, including in terms of ensuring adequate energy supply and increasing energy consumption in developing countries, some of which were particularly vulnerable to climate change.

7. His delegation welcomed draft guideline 6 (Equitable and reasonable utilization of the atmosphere) and wished to stress that the principle of common but differentiated responsibilities – which had been recognized by the Permanent Court of International Justice in the case relating to *Territorial Jurisdiction of the International Commission of the River Oder* and by the International Court of Justice in *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* – was crucial for ensuring equity among countries at different levels of development. His delegation also supported draft guideline 7 (Intentional large-scale modification of the atmosphere) and suggested that climate engineering should be used to limit human-caused climate change.

8. With regard to draft guideline 8 (International cooperation), his delegation called for the establishment of an international authority for the protection of the

atmosphere and the creation of a global earth observatory, comprising satellites and ground-based observation stations, that would share its data with the scientific community. Among the many responsibilities of wealthy countries was the obligation to cooperate closely with less-advantaged countries. Such cooperation was essential for progress. In that regard, it should be borne in mind that the wealth gap between countries was one of the major causes of the problems currently assailing the world.

9. Cameroon supported draft guideline 9 (Interrelationship among relevant rules). In draft guideline 10 (Implementation), it would be better to refer simply to the national institutional mechanisms of States, rather than the details and content of such mechanisms, since State practice was not uniform. The facilitative procedures referred to in draft guideline 11 (Compliance), paragraph 2 (a), should be implemented at the request of the State concerned and in a transparent, non-adversarial and non-punitive manner, so that States could comply with their obligations under international law in full assurance that their sovereignty was respected. Paragraph 2 (b) of draft guideline 11 was threatening and, as such, inappropriate. Given that States undertook international obligations voluntarily, and that draft guideline 12 provided for the peaceful settlement of disputes, draft guideline 11 should refer to "reminding States" or "drawing the attention of States", not "issuing a caution".

10. Turning to the topic "Provisional application of treaties", and recalling that the legal ambiguity of certain aspects of article 25 of the Vienna Convention on the Law of Treaties had been a source of controversy during the negotiation of the Convention, he said that elements of the draft Guide to Provisional Application of Treaties adopted by the Commission on second reading were also confusing. For instance, it was not clear whether "provisional application" or "provisional entry into force" was the appropriate term. It was also unclear whether a decision to apply a treaty provisionally was of the same character as the treaty itself or constituted a separate treaty in simplified form. In that regard, his delegation considered that the conditions for the provisional application of a treaty were closer to those for its entry into force, and in particular for its ratification or approval. A treaty in simplified form – in other words, a treaty that was not subject to ratification or approval but entered into force upon signature – did not raise the same issues as provisional application. However, when a treaty required ratification or approval in order to enter into force, the question of full or partial entry into force arose.

11. His delegation therefore had concerns about the scope of draft guideline 4 (Form of agreement), given the importance of parliamentary ratification of treaties concluded in solemn form. Ratification was the means by which the people, through their representatives, ensured that plenipotentiaries fulfilled their mandates. The provisional application of a treaty before it had been ratified was thus a great risk, which, in his delegation's view, could not be addressed by a separate treaty, or any other means or arrangement. Moreover, it was quite possible that a parliament would decide not to ratify all or part of a treaty, including provisions subject to provisional application. His delegation was concerned that the draft Guide might be an attempt to bring about the progressive development of international law in a way that would torpedo State sovereignty. Furthermore, it was unclear whether rights and obligations assumed by individuals while a treaty was being applied provisionally would be valid if the national parliament subsequently decided not to ratify the treaty. A declaration by a State, as referred to in draft guideline 4, could not override constitutional provisions governing State action in respect of treaties. Agreeing to provisional application on the basis of such a declaration would be unlawful per se and would result in the problem of imperfect ratification.

12. The question of parliamentary authority also arose in connection with draft guideline 5 (Commencement). Drafting two treaties – one subject to ratification and one for immediate provisional application – would effectively respond to a need to implement certain provisions immediately. However, that approach would not be perfect, as provisions whose implementation required parliamentary approval could be included only in the instrument subject to ratification.

13. With regard to legal effect, as addressed in draft guideline 6, there would also be a problem in a scenario where, notwithstanding the requirement for ratification, a treaty provided for certain provisions to enter into force immediately or on a certain date, as it was unclear what the status of the provisions already applied would be if the treaty were not eventually ratified. Would part of the treaty continue to exist as a treaty in simplified form, even if the treaty itself never entered into force? In practice, provisional application as set out in draft guideline 6 could function only in respect of preparatory provisions that would become null and void if the treaty was not ratified; there would be no legal certainty if it was used in respect of other kinds of provisions. The question of whether a multilateral convention could enter into force for certain parties upon ratification while other signatories continued to apply it only provisionally also had to be considered. If that were

possible, would those signatories be applying the convention itself, or a provisional subsidiary agreement?

14. Draft guideline 7 (Reservations) was equally ambiguous, in that it did not clarify whether reservations to treaties other than executive agreements or gentlemen's agreements could be formulated outside the framework provided for in article 2, paragraph 1 (d), and article 19 of the Vienna Convention. His delegation considered that draft guideline 8 (Responsibility for breach) was applicable only in the context envisaged in article 18 of the Vienna Convention, concerning the obligation not to defeat the object and purpose of a treaty prior to its entry into force.

15. While draft guideline 10 (Internal law of States, rules of international organizations and observance of provisionally applied treaties) might be applicable in respect of international organizations, it would be more complex to apply it to States, which had safeguards in their internal laws to prevent them from having to comply with obligations entered into by their plenipotentiaries as a result of pressure, threats or corruption. A State might therefore legitimately be able to invoke the provisions of its internal law as justification for its failure to perform such obligations arising under provisional application. It was also worth bearing in mind that important details could be overlooked in provisional application mechanisms aimed at ensuring the speedy application of certain provisions of a treaty. If provisional application resulted in the elimination of the above-mentioned safeguards, legal uncertainty could increase.

16. The progressive development of international law should be used as a tool for refining the law in force by improving provisions, codifying practices and clarifying ambiguities. Sovereign States had developed international law, compliance with which remained voluntary, and they must determine its future.

17. **Mr. Sakowicz** (Poland) said that the Commission's increasingly common practice of preparing draft texts that were intended from the start to be non-binding had merit in certain circumstances, since not all topics of interest to States were appropriate for the elaboration of draft articles. With regard to the topic "Provisional application of treaties", his delegation welcomed the detailed document containing comments and observations from Governments and international organizations (A/CN.4/737) and encouraged the Secretariat to continue producing such documents, which could inform the work of the Committee and the Commission.

18. The draft Guide to Provisional Application of Treaties adopted by the Commission on second reading could serve as a useful tool in treaty practice and could facilitate treaty operations at the international level. In Poland, provisional application was utilized only on an exceptional basis, as it could not be used to bypass parliamentary procedures. His delegation considered that the draft Guide adequately balanced the various approaches to and views on provisional application. The streamlining of the provisions on reservations and performance in good faith had improved the text.

19. With respect to the future work of the Commission, his delegation considered that the Commission had conducted useful work to clarify various provisions of the Vienna Convention and suggested that it consider carrying out similar work on other provisions of the Convention, such as those concerning the definition of the term "treaty", denunciation and inter se agreements. In the light of the Committee's lack of progress on the question of universal jurisdiction, it would be useful for the Commission to assist States in defining the principle of universal jurisdiction, identifying its nature and scope and considering State practice in its application.

20. **Mr. Stellakatos Loverdos** (Greece), referring to the topic "Protection of the atmosphere", said that his delegation supported the Commission's consideration of issues related to atmospheric pollution and atmospheric degradation, which were common concerns of humankind, and welcomed the adoption on second reading of the draft guidelines and the commentaries thereto. Given that various human activities regulated by specific rules could have an impact on the atmosphere, his delegation particularly appreciated draft guideline 9 (Interrelationship among relevant rules), which was aimed at ensuring that the rules on the protection of the atmosphere and relevant norms stemming from other branches of international law were compatible, mutually supportive and complementary.

21. The overall structure of the guidelines was commendable, in particular insomuch as it established a link between the due diligence obligation of States, reflected in draft guideline 3, and the ensuing obligations to ensure the conduct of environmental impact assessments and to utilize the atmosphere in a sustainable, equitable and reasonable manner, as set out in draft guidelines 4, 5 and 6. Draft guideline 3 provided for an overarching duty of care, while the subsequent draft guidelines set out more specific obligations deriving from that general duty. With regard to draft guideline 4, his delegation considered it appropriate that the obligation to ensure the conduct of an environmental impact assessment was triggered when activities were likely to cause a "significant adverse impact". That threshold had a solid basis in the case law of the

International Court of Justice and the International Tribunal for the Law of the Sea, and also in the Convention on Environmental Impact Assessment in a Transboundary Context and principle 17 of the Rio Declaration on Environment and Development. For the sake of clarity and consistency with principle 19 of the Rio Declaration, the Commission should have explicitly stated in paragraph (1) of the commentary to draft guideline 4 that notification and consultation processes should include all potentially affected States.

22. Regarding the topic "Provisional application of treaties", the Special Rapporteur's efforts to accommodate the various comments and concerns expressed by States was an important example of the kind of interaction and constructive dialogue that should exist between the Commission and the Committee. His delegation supported the approach taken in the commentaries to the draft Guide to Provisional Application of Treaties adopted by the Commission on second reading, whereby the Commission had recognized the usefulness but also the flexible and inherently voluntary nature of provisional application and had cautioned against its use as a substitute for securing entry into force of treaties or as a means of bypassing domestic procedures.

23. Greece welcomed the Commission's focus on *lex lata* in the draft Guide and noted with appreciation its restraint in relation to aspects of provisional application where practice was not yet sufficiently developed. In the light of the statement in draft guideline 2 that the purpose of the text was to "provide guidance regarding the law and practice on the provisional application of treaties", it would have been useful if the Commission had specified which rules of international law, other than article 25 of the Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, were relevant to each draft guideline. Furthermore, while his delegation fully agreed with the distinction drawn between the legal effect of provisional application and the legal effect of entry into force in the commentary to draft guideline 6, it would welcome a more thorough explanation of the difference, supported by relevant examples from contemporary practice.

24. Overall, the draft Guide commendably clarified critical aspects of provisional application. His delegation particularly supported draft guideline 4 (Form of agreement) and the analysis in the commentary thereto, and also draft guideline 12 (Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations), which had been drafted in such a way as to take into account current practice and the inherently voluntary nature of provisional application.

25. **Mr. Taufan** (Indonesia), referring to the topic "Protection of the atmosphere", said that the obligations set out in draft guidelines 3 (Obligation to protect the atmosphere), 4 (Environmental impact assessment) and 8 (International cooperation), as adopted by the Commission on second reading, were inseparable and mutually reinforcing and constituted the pillars of atmospheric protection. The obligation to protect the atmosphere encompassed the obligation of prevention and the obligation to implement enforcement measures, including through international cooperation. Enforcement should be effected through criminal, administrative and civil measures against individual and legal persons. It would require the adoption of appropriate legislative measures at the domestic level, including the criminalization of acts that caused atmospheric pollution, and also international cooperation. It was therefore of paramount importance that States should demonstrate good will and good faith to strengthen cooperation in legal matters relating to the protection of the atmosphere.

26. His delegation concurred with the statement in the commentary to draft guideline 4 that the variety of economic actors should be taken into account when determining how the obligation of conduct of an environmental impact assessment should be fulfilled. It also agreed that an environmental impact assessment should be required only when the impact of the potential harm in terms of atmospheric pollution or atmospheric degradation was "significant".

27. Turning to the topic "Provisional application of treaties", he said that, while Indonesia was not a party to the Vienna Convention on the Law of Treaties, it had no doubt that the Convention was the appropriate basis for the elaboration of draft guidelines on the topic. Provisional application could resolve certain difficulties related to meeting the conditions for entry into force of a treaty; however, it should never undermine the ultimate objective of a treaty. The draft Guide to Provisional Application of Treaties adopted by the Commission on second reading could assist States wishing to provisionally apply a treaty to serve their immediate interests, pending its entry into force. However, States retained the right to decide whether or not to apply a treaty provisionally. Lastly, his delegation considered that additional information was needed from States and international organizations with regard to their practice and their regulation of provisional application.

28. *Ms. Al-Thani (Qatar) took the Chair.*

29. **Ms. Maille** (Canada) said that the draft Guide to Provisional Application of Treaties adopted by the Commission on second reading would help to harmonize the use of provisional application by States and, in turn, strengthen the rules-based international order. It also clarified certain aspects of article 25 of the Vienna Convention and provided guidance on elements to be included in treaty provisions concerning provisional application. The examples provided in the annex to the draft Guide were particularly useful in that regard.

30. Provisional application was an integral part of the treaty process in her country, although it was not her Government's preferred method of application, since it was more complex than applying a treaty upon its entry into force. In Canada, a treaty could be applied provisionally after it had been signed, provided that no legislative measures were required for its application. If such a measure were required, provisional application was delayed until such time as the measure entered into force. In practice, provisional application had sometimes been limited to specific provisions of a treaty. It was important to ensure that the intention of the parties was reflected in provisions on provisional application, while also bearing in mind the need for coherence and uniformity. Her Government looked forward to using the draft Guide to enhance its practices.

31. As for the topic "Protection of the atmosphere", her delegation acknowledged that atmospheric degradation was of serious concern to the international community and that the topic was relevant to work in forums addressing issues such as climate change and the depletion of the ozone layer. However, it should be borne in mind that a number of existing international frameworks addressed issues related to atmospheric pollution, and much of the text of the draft guidelines on the protection of the atmosphere and the commentaries thereto, as adopted by the Commission on second reading, appeared to mirror ongoing work by other entities. It was important to ensure that the interpretation and implementation of the draft guidelines did not inadvertently conflict with legislative and policy work being conducted by other bodies. Furthermore, while her Government supported efforts to promote the consistency and compatibility of regimes governing different fields of international law, the complexity of such efforts must not be underestimated or understated, and the specifics of each situation should be considered when seeking to address potential conflicts or overlaps between different regimes.

32. While some of the draft guidelines were expressed in non-binding terms, others contained phrases that appeared more mandatory, such as "States have an obligation to", which seemed too strong for a mere guideline. Such wording might be appropriate where the guidelines were simply a restatement of established rules of international law; however, while certain obligations under customary international law might extend to the protection of the atmosphere, it was not always clear from the commentary to the draft guidelines how the Commission had determined that such obligations existed. Therefore, Canada did not consider the draft guidelines to be legally binding.

33. With regard to future work, her delegation proposed that the Commission consider the issue of arbitrary detention in State-to-State relations, an emerging issue in international law that sat at the juncture of consular law and international human rights law. More than 65 Member States had endorsed the Declaration against Arbitrary Detention in State-to-State Relations launched by Canada in February 2021, and the Working Group on Arbitrary Detention had examined the Declaration in its most recent annual report (A/HRC/48/55). The use of arbitrary detention as leverage in State-to-State relations ran counter to the basic principles of human rights law and had the potential to undermine trust and friendly relations between States. Her delegation hoped to work with the Commission and all Member States to bring about the prohibition of that unacceptable practice.

34. **Mr. Leonidchenko** (Russian Federation) said that the unusual hybrid format adopted by the Commission for its seventy-second session in view of the coronavirus disease (COVID-19) pandemic had proved challenging, as the study and formulation of legal rules required in-person exchanges and drafting and library research. It was therefore valuable that Commission members and their assistants had been able to travel to Geneva and attend part of the session in person.

35. Despite the challenges, the Commission had made progress on a number of complex and pressing topics and had begun work on the crucial new topic of sea-level rise in relation to international law, which had been placed on the Commission's programme of work at the initiative of a number of States. The Committee could ensure that the Commission's selection of topics was guided by the real needs of States by giving States the opportunity to express their views on the topics the Commission was planning to add to its programme of work and to propose new ones, perhaps by forming a working group for that purpose. The Committee could also include a provision regarding the relative priority of various topics in its draft resolution on the report of the Commission. While some topics were of urgent interest to States and should be given priority consideration, other topics concerned systemic

international law issues that required extensive study, such as those relating to sources of international law. Two such topics – "Peremptory norms of general international law (*jus cogens*)" and "General principles of law" – were currently under consideration.

36. He drew attention to the tendency of national and international courts to refer to the outputs of the Commission as though they reflected rules of international customary law, even though not all draft articles prepared by the Commission were ultimately used as the basis for international conventions. It would therefore be helpful if, in the interest of enhancing cooperation between the Commission and the Committee, the Committee noted in its draft resolutions not only the output of the Commission but also the comments of delegations.

37. The draft Guide to Provisional Application of Treaties and the draft annex thereto containing examples of provisions on provisional application would be useful to States and international organizations during future negotiations of international treaties. As had been noted by many delegations, the mechanism of provisional application, while much needed, was by its nature exceptional. The purpose of provisional application was to give immediate effect to or speed up the entry into force of a treaty or a part thereof in the event of urgency. Unjustified widespread use of the mechanism should be avoided. Provisional application must not be used to bypass domestic procedures or replace international rules and processes for entry into force of treaties. He welcomed the assertion in paragraph (3) of the general commentary that the draft Guide did not create any kind of presumption in favour of resorting to the provisional application of treaties and that it offered practical guidelines on using provisional application when it was truly necessary.

38. With regard to topics that might be moved to the Commission's current programme of work, one of the more promising and relevant to States was "Prevention and repression of piracy and armed robbery at sea". It might also be useful for the Commission to examine the topic "Settlement of international disputes to which international organizations are parties". In view of the increasingly prominent role played by international organizations, directly affecting the rights and responsibilities of States and even their citizens, the issue of responsibility of international organizations and the rules applicable to them as subjects of international law, merited closer attention by either the Commission or the Committee. It would also be worthwhile for the Commission to address the legal issues arising in connection with the COVID-19 pandemic, which had had repercussions for daily life, international relations and international law.

39. **Mr. Gajić** (Serbia) said that further work on provisional application of treaties was needed in order to complete the consideration of all aspects of the topic and provide proper guidance on a very sensitive area of international treaty law. The phrase "pending its entry into force" in draft guideline 3, as contained in the draft Guide to Provisional Application of Treaties adopted by the Commission on second reading, was problematic. During the period of provisional application, there was no certainty that the treaty would actually enter into force. The definition of provisional application should therefore contemplate its commencement and termination. While it was reasonable to suppose that provisional application would normally terminate when a treaty entered into force, there might be other reasons for its termination. For example, as envisaged in draft guideline 9 (Termination), the provisional application of a treaty or a part of a treaty with respect to a State or an international organization would be terminated if that State or international organization notified the other States or international organizations concerned of its intention not to become a party to the treaty. The draft guideline also reflected the possibility of provisional application being terminated in other circumstances; however, it clearly followed from article 25 of the Vienna Convention on the Law of Treaties that such a possibility should be agreed prior to the commencement of provisional application. It was uncertain during the period of provisional application whether States and international organizations would go on to express consent to be bound by the treaty; that uncertainty should be clearly reflected in the draft guidelines and the commentaries thereto.

40. While his delegation fully agreed with the Commission that provisional application served the overall purpose of preparing for or facilitating the entry into force of a treaty, a situation could arise where a party acted in bad faith by attempting to benefit from provisional application despite having no intention ever to express consent to be bound by the treaty in question. In that regard, it should be noted that draft guideline 8 (Responsibility for breach) did not fully address situations of unlawful termination of provisional application. The Commission should therefore provide a more detailed analysis of the possible consequences of the termination of provisional application, addressing in particular the question of whether such termination could give rise to State responsibility. It should further examine the relationship between draft guidelines 8 and 9 and provide guidance on State practice and the possible consequences for parties that acted in bad faith.

41. **Mr. Bouchedoub** (Algeria) said that his delegation was pleased that the draft guidelines on protection of the atmosphere, which had been adopted by the Commission and submitted to the General Assembly, had been prepared with due regard for ongoing political negotiations and existing instruments, including on climate change, ozone depletion and long-range transboundary air pollution, without prejudice to such questions as the liability of States and their nationals, the polluter-pays principle, the precautionary principle, and common but differentiated responsibilities. It welcomed the balanced approach evident in draft guideline 5 (Sustainable utilization of the atmosphere), in which both the concept of sustainable development and the need to reconcile economic development with the protection of the atmosphere were recognized.

42. Referring to the topic "Provisional application of treaties", he said that draft guideline 3 (General rule), providing that a treaty or a part of a treaty was applied provisionally pending its entry into force if the treaty itself so provided, or if in some other manner it had been so agreed, enshrined the principle of *pacta sunt servanda* by focusing on the will of the parties. Similarly, in draft guideline 6 (Legal effect), emphasis was placed on good faith, in order to ensure that provisional application was not exploited in an improper manner. His delegation also appreciated draft guideline 7 (Reservations), in which it was stated that the draft guidelines were without prejudice to any question concerning reservations relating to the provisional application of a treaty or a part of a treaty.

43. As to other decisions and conclusions of the Commission, his delegation encouraged the Working Group on the long-term programme of work to continue selecting topics that reflected the needs of States and were at a sufficiently advanced stage in terms of State practice, particularly those that reflected recent developments in international law. His delegation welcomed the arrangements whereby the session of the Commission had taken place in a hybrid format with remote interpretation in the six official languages of the United Nations. It hoped that the International Law Seminar would be convened in 2022 with the greatest possible number of young lawyers and appropriate geographical distribution reflecting the range of legal systems.

44. Lastly, his delegation hoped that Member States would support the candidacy for election to the Commission of Ahmed Laraba, in view of his considerable academic and professional expertise in the area of international law.

45. **Mr. Ikondere** (Uganda) said that his delegation welcomed the Commission's continued efforts to address existing, new and emerging issues of international law, including protection of the atmosphere. In that regard, Uganda particularly appreciated draft guideline 8 of the draft guidelines on that topic, adopted by the Commission on second reading, as international cooperation was critical to protecting the atmosphere from high levels of pollution.

46. **Mr. Waweru** (Kenya) said that the Commission's work on the topic "Protection of the atmosphere" had resulted in a set of draft guidelines and commentaries that addressed the interrelationship between the various sets of rules concerning the protection of ecosystems and other relevant areas of international law. The text adopted by the Commission on second reading would be a good starting point for States in their consideration of broader issues relating to the protection of the environment, an issue that was of the utmost importance to his Government. As the host country for the United Nations Environment Assembly, Kenya would support all efforts to stem environmental degradation and the occurrence of adverse events resulting from climate change. The international community must work together to address those threats. His delegation therefore welcomed the Commission's recommendation that the General Assembly take note of the draft preamble and guidelines and ensure their widest possible dissemination.

47. Regarding the topic "Provisional application of treaties", his delegation welcomed the draft guidelines adopted by the Commission on second reading as a flexible and voluntary tool to assist States wanting to give effect to provisions of a treaty pending its entry into force.

48. With respect to the upcoming elections to the Commission, Kenya was proud to have nominated a woman candidate, Phoebe Okowa, and requested delegations to support her candidacy, bearing in mind the importance of gender balance, gender parity and gender equity within the Commission as a first step towards gender equality. Considerations such as geographical representation and the importance of having both practitioners and academics represented within the Commission should also be taken into account.

49. **Ms. Romanska** (Bulgaria), referring to the topic "Protection of the atmosphere", said that the Commission and the Special Rapporteur had made a significant contribution to clarifying the subject matter with the adoption on second reading of the draft guidelines. Bulgaria supported the Commission's

recommendation that the General Assembly take note in a resolution of the draft preamble and draft guidelines, annex them to the resolution, and ensure their widest possible dissemination.

50. Draft guideline 9 (Interrelationship among relevant rules), paragraph 1, was particularly valuable, as it provided that the rules of international trade and investment law, of the law of the sea and of international human rights law, among other relevant rules of international law, should be interpreted and applied in order to give rise to a single set of compatible obligations with a view to avoiding conflicts, and that that should be done in accordance with the rules set forth in the Vienna Convention on the Law of Treaties, including articles 30 and 31, paragraph 3 (c), and the principles of customary international law. The Commission had also made clear in the commentary to draft guideline 2 that, although the draft guidelines did not deal with questions concerning the polluter-pays principle and the precautionary principle, as stated in paragraph 2 of the draft guideline, that did not imply the legal irrelevance of those principles in any way.

51. Bulgaria agreed with the Commission's decision to exclude possible causes that were the subject of political debate from the definition of atmospheric pollution. In that regard, her delegation supported the view that due care with regard to the obligation to protect the atmosphere was an obligation of conduct rather than an obligation of result. The wording of draft guideline 5, paragraph 2, which envisaged combining the need for economic development with the need to protect the atmosphere, was balanced and pragmatic. Bulgaria also approved of the use of scientific expertise in the peaceful settlement of disputes arising in connection with the protection of the atmosphere, as described in draft guideline 12. That approach was in line with modern standards in the field of international environmental law and with the means for peaceful settlement of disputes.

52. Turning to the topic of provisional application of treaties, she said that the draft guidelines provided practical guidance and clarity on questions left unanswered by article 25 of the Vienna Convention on the Law of Treaties. The draft guidelines had already been referenced in a legal opinion with regard to a decision of the Constitutional Court of Bulgaria in relation to a preliminary question concerning provisional application. The mechanism had also proved useful for the application of international instruments drafted during the COVID-19 pandemic.

53. Bulgaria welcomed the inclusion of international organizations in draft guideline 1 (Scope) and the clarifications provided in the commentaries to draft guideline 8 (Responsibility for breach) and draft guideline 9 (Termination). It also welcomed the inclusion of a compilation of the practice of States and international organizations in the provisional application of treaties, with examples from both bilateral and multilateral treaties and from different geographical regions. Her Government had followed the Commission's draft guidelines in formulating the opt-in clause for its provisional application of the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe.

54. On other decisions and conclusions of the Commission, she expressed her delegation's gratitude to the members of the Commission for holding a virtual memorial meeting in honour of Judge Alexander Yankov, a prominent Bulgarian lawyer and diplomat, former Chair of the Commission and Special Rapporteur for the topic "Status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier". Based on the work done by the Commission on that topic, Bulgaria had amended its domestic laws in response to the challenges presented by the COVID-19 pandemic. Her delegation also noted the difficulties encountered with the hybrid format of the Commission's meetings at its seventy-second session and hoped that the lessons learned could be applied in the future, if necessary.

55. Her delegation saw the forthcoming elections of members of the Commission as an opportunity to move the membership closer to the goal of gender parity. Bulgaria also hoped that the International Law Seminar would be reconvened during the next session of the Commission. As a unique platform for introducing young lawyers, including from developing countries, to international law, it was one of the most successful examples of international cooperation in that field.

56. **Ms. Arumpac-Marte** (Philippines) said that her Government had nominated a candidate for membership in the Commission for the term 2023–2027 to represent the hybrid legal tradition of the Philippines, share its State practice, contribute to building closer relations between States Members of the United Nations and the Commission and prioritize the agenda of developing States. She counted on Committee members to support the Philippine candidate.

57. Turning to the topic of protection of the atmosphere, she said that the atmosphere – as the world's largest single natural resource and one of its most important, as well as a shared, common and finite resource – was a common concern. The Philippines

reiterated its position that States had a general obligation to protect the atmosphere from human activity and a corresponding obligation to cooperate in that regard.

58. With regard to the draft guidelines on the topic, adopted by the Commission on second reading, the Philippines welcomed the emphasis placed in the preambular provisions on atmospheric pollution and atmospheric degradation as a common concern of humankind; the special situation and needs of developing countries; the close interaction between the atmosphere and the oceans; the special situation of low-lying coastal areas and small island developing States; and the recognition of the interests of future generations. The latter was a principle that had been part of Philippine law and jurisprudence for almost 30 years. In *Minors Oposa et al. v. Factoran*, the Supreme Court of the Philippines had ruled that the minors who had filed the case against the Secretary of the Department of Environment and Natural Resources, to mandate him to cancel all existing timber licence agreements and to stop their further issuance, had legal standing to do so on behalf of their generation and the generation yet unborn. That decision had been based on the concept of intergenerational responsibility in environmental law.

59. Her delegation noted that under draft guideline 1 (Use of terms), subparagraph (b), the term "pollution" referred only to pollution with effects extending beyond the State of origin. Given that the atmosphere was a continuum of gas, it was difficult to identify what level of pollution had no effect beyond the State of origin. Limiting the scope of the draft guidelines to pollution with transboundary effects, while consistent with the *Trail Smelter* arbitration ruling on inter-State liability, left the State's obligation to protect its own residents from pollution unaddressed.

60. The draft guidelines featured several positive State obligations, including the obligation to protect the atmosphere, in draft guideline 3; the requirement for States to ensure that environmental impact assessments were undertaken in connection with activities within their jurisdiction and control that were likely to cause a significant adverse impact on the atmosphere, in draft guideline 4; and the obligation for States to cooperate with each other and with international organizations, in draft guideline 8. Under draft guideline 11 (Compliance), States were also required to abide by their obligations under relevant international law in good faith. Although the articulation of those positive obligations seemed inconsistent with the nature of the text as a non-legally binding document, her delegation welcomed their inclusion in the draft guidelines.

61. Her delegation, cognizant of the parameters within which work on the topic had been undertaken, was deeply grateful to the Special Rapporteur for achieving a succinct outcome that to some extent reflected the aspirations of many States, and also signalled the progressive development of relevant international law.

62. Turning to the topic of provisional application of treaties, and referring to the draft Guide to Provisional Application of Treaties adopted by the Commission on second reading, she observed that it would be useful to include a rule of construction according to which a treaty should not be deemed subject to provisional application unless the text of the treaty or other instrument expressly and categorically provided for it. Such a rule would be consistent with her country's practice and would take into account the situation of States where the executive negotiated treaties but shared foreign policy powers with other bodies, so that provisional application outside of that sharing of powers could not be presumed.

63. In the Philippines, in line with Executive Order No. 459 on guidelines for the negotiation and ratification of international agreements, and consistent with article 25 of the Vienna Convention on the Law of Treaties, no treaty or executive agreement could be given provisional effect unless it was shown that by doing so a pressing national interest would be upheld, as determined by the Department of Foreign Affairs, in consultation with the concerned agencies. The term "provisional effect" was defined under the Executive Order as the "recognition by one or both sides of the negotiation process that an agreement be considered in force pending compliance with domestic requirements for the effectivity of the agreement". There had therefore been marked hesitation in the Philippines to give treaties provisional effect, out of concern that it might lead to non-compliance with internal rules governing the granting of State consent to be bound by a treaty. The efforts of the Commission to ascertain more precisely the legal effects of provisional application and to draw a clearer distinction between provisional application and entry into force were therefore greatly appreciated. Her delegation supported the Commission's recommendation that the General Assembly request the Secretary-General to prepare a volume of the *United Nations Legislative Series* compiling the practice of States and international organizations in the provisional application of treaties together with other relevant materials, which would assist States in assessing and reviewing their current internal guidelines in light of the draft guidelines adopted by the Commission and the practice of other States.

64. On other decisions and conclusions of the Commission, the Philippines supported the Commission's decision to include the topic "Subsidiary means for the determination of rules of international law" in its long-term programme of work. It also welcomed the establishment of the Working Group on methods of work of the Commission and hoped that discussions would include the issue of strengthening relations with the Sixth Committee. The Philippines commended the Commission on the progress made on the topics in its current programme of work and noted the challenges of working in a hybrid format, which had limited the time available for decision-making and negotiation and reduced the opportunities for collegiality. Her delegation hoped that it would be possible to convene the International Law Seminar in 2022, to allow for interaction between the Commission and jurists, professors and government officials.

65. She noted with concern that budgetary constraints in recent years had reduced budgeted resources to below the levels necessary for all members of the Commission, and the full substantive Secretariat team, to attend the Commission's annual session. Sufficient, adequate and predictable funding for the Commission was important to ensure that all the main forms of civilization and the main legal systems of the world were represented. The necessary budgetary resources should also be allocated for the Commission's secretariat, as well as for the Special Rapporteurs, including their honorariums. Her delegation supported the Commission's proposal that a trust fund be established for that purpose.

66. **Mr. Gómez-Robledo** (Special Rapporteur for the topic "Provisional application of treaties") said that he was grateful to Member States for recognizing the work of the Commission on the topic and his own contribution to it and for their support and trust. From the start of its work on the topic, the Commission had understood the importance of maintaining a balanced approach and had worked to ensure that the draft Guide to Provisional Application of Treaties would not be an instrument that encouraged States and international organizations to resort to provisional application, a mechanism that would continue to be used only under exceptional circumstances, given that entry into force remained the natural vocation of treaties. Nonetheless, in view of the abundant practice that existed, and taking a pragmatic approach, he hoped that the draft Guide would prove to be a useful tool for States and international organizations when they did decide to make use of provisional application. He thanked the Commission's secretariat for its invaluable support, including in producing the memorandums that he had regularly consulted in the course of his work. He had kept the needs of developing States and small island developing States at the forefront of his mind while developing the draft Guide. Such States represented one fourth of the Organization's membership and for various reasons did not have access to specialists in the field of international law.

67. **The Chair** invited the Committee to begin its consideration of chapters VI and IX of the report of the International Law Commission on the work of its seventy-second session (A/76/10).

68. **Mr. Luteru** (Samoa), speaking on behalf of the Pacific small island developing States on the topic of sea-level rise in relation to international law, said that the United Nations Convention on the Law of the Sea served as an effective legal regime for ocean governance. However, as had been made clear by the Co-Chairs of the Study Group on the topic in their first issues paper (A/CN.4/740, A/CN.4/740/Corr.1 and A/CN.4/740/Add.1), the drafters of the Convention had not foreseen the challenges to that legal regime posed by climate change-related sea-level rise. While it was undeniable that sea-level rise raised serious issues of international law with respect to small island developing States, it was also an issue of relevance to the international community as a whole.

69. The mean low-water lines along coasts around the world, as marked on large-scale charts officially recognized by the relevant coastal States, were the normal baselines currently used for measuring maritime zones under the Convention. Those physical points would likely change in the future owing to climate change-related sea-level rise, but the Convention did not explicitly state what that meant for maritime zones and the rights and entitlements that flowed from them. The Convention should be applied in a way that respected such rights and entitlements. He noted with appreciation the preliminary observations set out in paragraph 104 (e) and (f) of the first issues paper, in particular the observation that an approach based on the preservation of baselines and outer limits of maritime zones was not prohibited under the Convention. The leaders of the member States of the Pacific Islands Forum had recently issued a Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, in which they had affirmed that once Pacific islands had established and provided notification of their maritime zones to the Secretary-General, such maritime zones and the rights and entitlements that flowed from them would continue to apply, without reduction.

70. Many Pacific small island developing States had built on regional State practice by adopting laws aimed at maintaining their maritime limits for perpetuity,

which included descriptions of their maritime boundaries using geographical coordinates, definitions of the outer limits of their continental shelves beyond 200 nautical miles and references to neutral decision-making processes under the United Nations Convention on the Law of the Sea. Under article 31, paragraph 3 (b), of the Vienna Convention on the Law of Treaties, subsequent practice in the application of a treaty which established the agreement of the parties regarding its interpretation was to be taken into account for the purpose of treaty interpretation. In light of such subsequent practice, the Co-Chairs of the Study Group had observed in the first issues paper that there was no obligation under the United Nations Convention on the Law of the Sea for States to update their maritime zone coordinates or charts once copies thereof had been deposited with the Secretary-General.

71. The issues relating to statehood, statelessness and climate-induced migration were directly relevant to the Pacific region in view of the possibility that the territories of small island States could be entirely submerged owing to climate change-related sea-level rise. Under international law, there was a presumption that a State, once established, would continue to exist, particularly if it had a defined territory and population. However, in light of the conclusion of the Intergovernmental Panel on Climate Change in its recent report that global warming would exceed the goal established in the Paris Agreement of keeping the temperature increase to 1.5°C above pre-industrial levels, the real concern of Pacific small island developing States was that the ocean would one day claim their ancestral homes or force their peoples to leave. It was therefore urgent that the international law implications of climate change-related sea-level rise for statehood be addressed. In that connection, the Pacific small island developing States looked forward to the Study Group's work on issues related to statehood and to the protection of persons affected by sea-level rise.

72. **Ms. Gauci** (Representative of the European Union, in its capacity as observer), speaking also on behalf of the candidate countries Albania, Montenegro, North Macedonia and Serbia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia, the Republic of Moldova and Ukraine, said that, in view of the preliminary character of the work of the Study Group on the topic of sea-level rise in relation to international law, and the close links between law of the sea, statehood and protection issues, any recommendations would need to be considered by the Commission as a whole, which would only be possible after the second issues paper had been presented and any necessary further studies on the relevant sources of law and principles and rules of international law, State practice and *opinio juris* had been conducted.

73. The European Union was deeply attached to preserving the integrity of the United Nations Convention on the Law of the Sea. It therefore welcomed the general agreement highlighted in paragraph 267 of the Commission's report (A/76/10) that, in line with the syllabus prepared in 2018 (A/73/10, annex B), the Study Group would not propose modifications to the Convention. The Commission and the Study Group should bear that general approach in mind when considering and discussing the different legal issues in relation to sea-level rise and should base such consideration on both issues papers, which would set out all the legal issues relating to the law of the sea, statehood and protection of persons affected by sea-level rise.

74. **Ms. Harm** (Fiji), speaking on behalf of the Pacific Islands Forum, said that Pacific Island countries had a profound connection to and reliance on the ocean, which was at the heart of their geography, cultures and economies. Their past, present and future development was based on the rights and entitlements guaranteed under the United Nations Convention on the Law of the Sea. The greatest threat facing them was climate change; sea-level rise, in particular, was a real and pressing issue that raised interrelated development and security concerns.

75. With regard to State practice and *opinio juris*, the Forum's approach to sea-level rise was to preserve maritime zones, while also upholding the integrity of the Convention as the global legal framework within which all activities in the oceans and seas must be carried out. In that respect, the Forum members, in August 2021, had adopted a Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, as a formal statement of their view on how the Convention's rules on maritime zones applied with regard to climate change-related sea-level rise. The Declaration constituted a considered, moderate and targeted approach to the issue of sea-level rise and its relationship to maritime zones, through a good faith interpretation of the Convention and a description of the current and intended future practice of the Forum's members in light of that interpretation. Not only members of the Pacific Islands Forum but also other countries, including small island developing States and low-lying States outside of the Pacific region, needed stability, security, certainty and predictability of their maritime zones. She reiterated that such a need was met through the preservation of maritime zones and the

rights and entitlements that flowed from them, notwithstanding climate change-related sea-level rise.

76. The Pacific Islands Forum called on all Member States and the international community to acknowledge the critical importance of the issue of sea-level rise to small island developing States and low-lying States and to support the aforementioned Declaration by echoing its core elements in their own national and group contexts, as the Heads of State and Government of the Alliance of Small Island States had done in their Leaders' Declaration earlier that year.

77. **Ms. Challenger** (Antigua and Barbuda), speaking on behalf of the Alliance of Small Island States, said that the 39 small island and low-lying developing States comprising the Alliance were especially affected by sea-level rise. Their territories encompassed vast swaths of the ocean and the maritime zones allocated to them under the United Nations Convention on the Law of the Sea were central to their statehood, economies, food security, health and education prospects, and even their unique cultures and livelihoods. All those elements were currently under threat owing to relentless sea-level rise, which had not been contemplated at the time of negotiations on the Convention. Small island developing States were therefore determined to be engaged in the development of the international law that affected them. They had requested the inclusion of the topic "Sea-level rise in relation to international law" in the Commission's programme of work and had submitted written comments, engaging with the Commission for the first time in some cases. They had also contributed to discussions in the Committee.

78. At a recent virtual summit, the Heads of State and Government of the member States of the Alliance had adopted a declaration in which they "affirm that there is no obligation under the United Nations Convention on the Law of the Sea to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations, and that such maritime zones and the rights and entitlements that flow from them shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise". That declaration reflected the practice of many small island developing States on the issue and echoed an earlier declaration by the Heads of State and Government of the Pacific Islands Forum and the preliminary observations in the first issues paper prepared by the Co-Chairs of the Study Group (A/CN.4/740, A/CN.4/740/Corr.1 and A/CN.4/740/Add.1).

79. The need for legal stability, security, certainty and predictability in relation to maritime zones, which was of paramount importance for small island developing States, was met through the preservation of baselines and outer limits of maritime zones measured therefrom, as well as the entitlements of those States. The Heads of State and Government of the Alliance's member States had affirmed in their declaration that their maritime zones, rights and entitlements could be preserved.

80. A body of State practice regarding the preservation of maritime zones and the resulting entitlements continued to develop, with additional examples of State practice having been noted over the past year. Many small island developing 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 State practice, where combined with *opinio juris*, was evidence of emerging rules of customary international law, and could also be considered as subsequent practice for purposes of interpretation of the relevant provisions of the United Nations Convention on the Law of the Sea. Although there might not yet be sufficient State practice and *opinio juris* to conclude that a general customary rule existed concerning the preservation of maritime zones, the Alliance believed that the trend was in that direction.

81. With regard to further analysis of issues outlined in paragraph 294 of the Commission's report, including the identification of other relevant sources of law relating to the topic, she repeated the Alliance's suggestion that 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. It was unclear how the 1958 Geneva Conventions on the Law of the Sea, and in particular their *travaux préparatoires*, which had been negotiated when many of the small island developing States had been under colonial administration, were relevant to the interpretation of the law of the sea under current circumstances.

82. 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.

83. **Ms. Sverrisdóttir** (Iceland), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) and referring to the topic of immunity of State officials from foreign criminal jurisdiction, said that the Nordic countries agreed with the view of the Special Rapporteur, as expressed in her

concluding remarks on the topic to the Commission at its 3527th meeting, held on 21 May 2021 (A/CN.4/SR.3527), that several substantive issues would require further consideration before the draft articles could be adopted on first reading. In particular, additional effort would be required to successfully address draft article 7 on exceptions to immunity *ratione materiae* in respect of crimes under international law, which had been provisionally adopted by the Commission. The Nordic countries reiterated their support for draft article 7 and their commitment to the Rome Statute of the International Criminal Court, underlining the importance of harmonizing the draft articles with the Rome Statute.

84. With regard to the draft articles proposed by the Special Rapporteur in her eighth report (A/CN.4/739), the Nordic countries favoured the inclusion in draft article 18 of an explicit reference that recognized the autonomy of the legal regimes applicable to international criminal tribunals. They shared the view of the Special Rapporteur that a "without prejudice" clause was the appropriate means to do so and that it did not go beyond the remit of the draft articles or give rise to hierarchical relationships between any rules. Rather, it merely separated different legal regimes whose validity and separate fields of application would still be preserved. The Nordic countries therefore supported the wording of draft article 18. Mindful of the similarities between draft article 18 and draft article 1, paragraph 2, which both contained "without prejudice" clauses, they also agreed with the Special Rapporteur that draft article 18 should be incorporated as paragraph 3 of draft article 1.

85. As for the proposed draft article 17 (Settlement of disputes), the Nordic countries reiterated their view that a mechanism for the settlement of disputes between the forum State and the State of the official would provide certainty to both States and help reduce potential abuse of the process for political purposes. They concurred with the view that the procedural mechanisms proposed in the draft articles could be seen as a whole, intended to balance the interests of the forum State and the State of the official, and that a dispute resolution clause could be seen as a final procedural safeguard. In that context, it seemed preferable to include a draft article relating to the settlement of disputes. They also agreed with the Special Rapporteur that the final outcome of the work of the Commission could be relevant to the content of draft article 17.

86. With regard to draft article 17, paragraph 3, the Nordic countries noted that if the forum State was obliged to suspend the exercise of its jurisdiction until a competent organ had issued a final ruling, the forum State would be forced to forfeit custody of the official. Should the ruling of the competent organ be in favour of the forum State, regaining custody of the individual would be extremely challenging. Hence, draft article 17, paragraph 3, could have the practical effect of distorting the balance of the interests of the forum State and the State of the official. In light of the views and doubts expressed by some Commission members, the provision merited further examination.

87. Turning to the topic of sea-level rise in relation to international law, she recalled that the Intergovernmental Panel on Climate Change had been unequivocal in its recent report that human activity had warmed the atmosphere, ocean and land and that sea levels would keep rising well beyond 2100 and remain elevated for thousands of years, regardless of action taken to address climate change going forward. Although the magnitude and rate of sea-level rise would depend on how quickly emissions were reduced, the resulting changes would be profound. Those developments were a matter of concern for all Member States, but some States, not least small island developing States that had done little to cause climate change, were likely to be disproportionately affected. Apart from the possibility that the territory of some States would be partially or fully submerged, sea-level rise could also contribute to land degradation, periodic flooding and freshwater contamination. In its work on the legal aspects of sea-level rise, the Commission should view sea-level rise due to climate change as a scientifically proven fact.

88. The Nordic countries supported the Commission's consideration of the topic through the study of the three subtopics, 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, the results of which would be included in a finalized substantive report on the topic as a whole.

89. With regard to the first subtopic, the Nordic countries could not overemphasize the importance of the United Nations Convention on the Law of the Sea. As the principal treaty on the modern law of the sea, the Convention had greatly contributed to international peace and security since its adoption in 1982. It provided predictability and stability, and its universal and unified character should be safeguarded and strengthened. Like any other legal instrument, the Convention should be interpreted in light of changing circumstances, but it was too early to comment on the precise legal implications of sea-level rise for the Convention.

90. As further discussion was needed on several aspects of the subtopic, the Nordic countries welcomed

the intention of the Study Group to extend its study of such issues as State practice and *opinio juris*. In view of the interplay between legal, scientific and technical aspects of the law of the sea, they also supported the agreement that the Study Group might call upon scientific and technical experts, in a selective and limited manner, should that prove useful.

91. It was important to make a distinction between the legal and political aspects of addressing climate change. The Nordic countries were committed to taking urgent climate action and simultaneously engaging in structured discussions with a view to achieving greater legal clarity on various questions related to sea-level rise.

The meeting rose at 5.50 p.m.