United Nations A/C.6/78/SR.26

General Assembly
Seventy-eighth session

Official Records

Distr.: General
11 December 2023

Original: English

Sixth Committee

Summary record of the 26th meeting
Held at Headquarters, New York, on Wednesday, 25 October 2023, at 3 p.m.

Chair: Mr. Chindawongse . . . . . (Thailand)

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23-20400 (E)

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

Statement by the President of the International Court of Justice

1. **Ms. Donoghue** (President of the International Court of Justice) said that, in view of the fact that, after 13 years of service, she was coming to the end of her term on the bench of the International Court of Justice, she would speak about the future of Court, focusing on certain recent trends in the Court's docket and whether they could be expected to persist in the foreseeable future; in light of those trends, the resources that would need to be made available to the Court to enable it to continue to fulfil its mandate; and her thoughts on what should be retained and what should be changed in the Court's Statute should it become open to amendment.

2. The Court's current docket comprised 20 cases arising from all regions of the world and involving a wide range of legal issues, including territorial and maritime delimitation, human rights, reparations for internationally wrongful acts, environmental protection, the jurisdictional immunity of States and the interpretation and application of international treaties. The jurisdictional basis invoked by applicants had important implications for the Court's current and future work. The jurisdiction of the Court in contentious cases derived ultimately from the consent of States, which could be expressed in different forms. For instance, States might consent broadly and prospectively to the Court's jurisdiction, either by depositing a so-called optional clause declaration pursuant to Article 36, paragraph 2, of the Statute, or through a treaty on the settlement of disputes. Two States might also indicate their consent in a special agreement that asked the Court to adjudicate a defined dispute between them, often referred to as a *compromis*. In addition, a State might express its consent to the Court's jurisdiction to decide disputes concerning the interpretation or application of a particular treaty, usually through a compromissory clause in that treaty or an optional protocol thereto.

3. With regard to the Court's contentious proceedings, one study published in 2014 had indicated that international treaties had been invoked as the primary title of jurisdiction in approximately 40 per cent of the contentious cases brought before the Court up to that point. That percentage was much higher for the 18 contentious cases currently on the Court's General List. In approximately two thirds of the cases, the applicants had claimed that the Court had jurisdiction to settle a dispute under a particular treaty on the basis of the relevant compromissory clause or optional protocol. In those cases, the Court's jurisdiction was limited, *ratione materiae*, to disputes concerning the interpretation or application of a particular treaty.

4. It was therefore necessary for the Court to examine the dispute that the applicant sought to place before it in relation to the scope of the treaty in question. In so doing, the Court often confronted the fact that the application submitted presented a particular dispute that arose in the context of broader disagreements between the parties. The Court had made clear that, in such cases, the fact that a dispute before the Court formed part of a complex situation that included various matters over which the States concerned held opposite views could not lead the Court to decline to resolve that dispute, provided that the parties had recognized its jurisdiction to do so and the conditions for the exercise of that jurisdiction were otherwise met.

5. The Court's 2021 judgment in the case instituted against the United Arab Emirates by Qatar on the basis of the compromissory clause in the International Convention on the Elimination of All Forms of Racial Discrimination offered an example of the questions that arose when the Court was asked to determine the scope of its jurisdiction *ratione materiae*. When proceedings in that case had been instituted, there had been friction between the two States that had manifested itself in a variety of ways. In its application filed with the Court, Qatar had complained about measures that the United Arab Emirates had taken against Qatari nationals. Following preliminary objections filed by the respondent, the Court had been asked to pronounce on the scope of the notion of racial discrimination under the Convention and the corresponding limits of its jurisdiction *ratione materiae*. In particular, the Court had had to decide whether the term "national origin" contained in the definition of racial discrimination in the Convention encompassed current nationality, as the applicant had maintained. The Court had found that that had not been the case and, consequently, that the measures about which Qatar had complained, which had been based on the current nationality of its citizens, did not fall within the scope of the Convention. On that basis, among others, the objection to jurisdiction of the United Arab Emirates had been upheld and the case had been removed from the Court's docket.

6. An extensive jurisprudence had been and would continue to be developed tackling the question whether a dispute that an applicant had asked the Court to resolve was capable of falling within the provisions of the relevant treaty and whether, as a consequence, that dispute was one over which the Court had jurisdiction *ratione materiae* to entertain. In the coming years, it would be important for the Court to continue to address questions of jurisdiction *ratione materiae* in a careful

manner, showing sensitivity to the boundaries of its jurisdiction. On the one hand, respondent States could not be required to litigate disputes that lay outside the Court's jurisdiction, while, on the other hand, applicant States were entitled to the exercise of such jurisdiction as the Court had.

7. As had been noted by commentators, the compromissory clauses of human rights treaties had been invoked as the basis for jurisdiction in many of the cases on the Court's recent and current docket. Those cases could give rise to questions about the standing of a particular applicant to institute proceedings. The Court had addressed that question in its 2012 judgment in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, which had been brought on the basis of the compromissory clause in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. The Court had had occasion to return to the question of standing in its 2022 judgment on the preliminary objections raised by Myanmar in the proceedings brought by The Gambia under the Convention on the Prevention and Punishment of the Crime of Genocide. In that case, The Gambia had alleged that Myanmar had violated its obligations under the Convention in relation to the Rohingya group. In one of several preliminary objections, the respondent had asserted that The Gambia had lacked standing because it had not been an injured State and thus did not have an individual legal interest to bring the case. The Court, recalling its earlier judgment in *Belgium v. Senegal*, had disagreed and had held that the applicant had had standing to invoke the responsibility of the respondent with respect to alleged violations of obligations *erga omnes partes*, or obligations under the relevant treaty owed to all parties to the treaty. That case had proceeded to the merits stage. It had been noted, sometimes with enthusiasm and sometimes with trepidation, that standing based on alleged violations of obligations *erga omnes partes* in certain treaties had the potential, in the future, to expand the range of cases brought before the Court.

9. Turning to the Court's advisory proceedings, she said that the Court had recently been seized with two requests for advisory opinions from the General Assembly, both of which had raised issues of great importance to Member States and to the international community as a whole. The widespread interest in the subjects of those advisory opinions had been confirmed by the fact that in July 2023, 53 Member States, the Observer State of Palestine and three international organizations had submitted written statements on the questions before the Court in the proceedings concerning the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. At least as many States were expected to participate in the advisory proceedings concerning the obligations of States in respect of climate change, and several international organizations had been authorized to present statements in that proceeding. The Court could be expected to devote a significant part of its time and energy to the two proceedings over the next two years, while in parallel seeking to maintain its progress on the contentious cases on its docket.

10. Addressing the size of the Court's docket, she said that it was readily apparent that the current workload of the Court was extremely heavy and that the demands on the Court were not fully captured by the fact that there were 20 cases on its General List. Contentious matters before the Court, with increasing frequency, entailed incidental proceedings such as requests for the indication of provisional measures, preliminary objections and counterclaims. Applications for permission to intervene or declarations of intervention could also consume the Court's time and attention. Furthermore, because the Court was both a court of last instance and a court of first instance, cases brought before it routinely involved not only intricate legal questions but also complex and competing claims as to the facts, often calling for careful analysis of supporting evidence.

11. In one case currently before the Court, the parties' written pleadings, together with annexes, amounted to some 41,000 pages. The combined impact of those factors on the workload of the Court and its small Registry was dramatic. The workload had also greatly increased over a relatively short period. In 2011, the Court had issued 2 judgments and 11 orders, while in 2022 it had rendered 4 judgments and 28 orders. However, the resources available had not increased in parallel with the demands States had placed on the Court. In 2010, the total number of established posts in the Registry was 114; since then, that number had increased to just 117 posts. The Court's budget for the biennium 2010–2011 was approximately $46.5 million, while the Court's approved budget for 2023, which had been changed to a single-year basis, was around $29 million. When accounting for inflation, it was apparent that the resources available to the Court had stagnated even as its workload had greatly increased.

12. The Court had been able to keep pace with the expansion of its docket because both the Court and its Registry had placed a sustained focus on the review of working methods with a view to efficiency and modernization, and because of the exceptional

dedication of the Registry. Although the Fifth Committee was the most appropriate body with which to raise resource matters, but given that the Court's budget accounted for less than 1 per cent of the Organization's overall budget, it might not stand out among the Fifth Committee's priorities. She therefore urged members of the Sixth Committee to act as the Court's allies and supporters and discuss the trends she had highlighted with colleagues on the Fifth Committee and others within their Governments participating in budgetary matters. The Court hoped to have an opportunity, in 2024, to organize a briefing for Sixth Committee experts focused on budgetary matters which would be relevant to their areas of interest and expertise.

13. In conversations with students and practitioners, she was often asked whether the Statute of the Court should be revised. She responded simply by saying that, given that the Statute was an integral part of the Charter of the United Nations, amendments thereto were unlikely in the near future, as they would be subject to the same stringent requirements that applied to the Charter itself. However, it was possible that the Charter might eventually be opened for amendment. Based on her experience in interpreting and applying the Statute, it was her view that if such an opportunity arose, very few changes should be made, and that such changes should be made only after careful consideration. Several basic aspects of the Statute had stood the test of time.

14. When the Statute was being drafted in the 1940s, a proposal to make the jurisdiction of the Court compulsory for all Member States had failed, and it seemed unlikely that there would be sufficient support among Member States to make the Court's jurisdiction mandatory during the consideration of future amendments. However, that should not be a troubling conclusion. The Statute established the Court as a standing, global forum for the settlement of inter-State disputes on any topic governed by international law and as the principal judicial organ of the Organization. The Statute did not prescribe the content of international law to be applied by the Court but instead left it to be developed elsewhere, for example, in treaties. Drawing from the common law and civil law traditions, it set out the essential infrastructure of the Court while at the same time allowing sufficient flexibility for adjustment by the Court itself based on experience, through the Rules of Court. The Statute was thus a well-designed framework for the settlement of disputes and for the rendering of advisory opinions to United Nations bodies.

15. There was value in the fact that Member States, as well as United Nations bodies authorized to request advisory opinions, were in a position to consider on an ongoing basis whether they were prepared to have their most pressing issues placed before the Court. The current docket indicated high expectations for and trust in the Court. The extent to which that situation would continue would be determined largely by the manner in which States assessed the substantive and procedural decisions of the Court. If the Court demonstrated integrity, independence and impartiality in all of its work, and if Member States provided the Court with the resources that it needed to meet demand, the Statute, with only modest changes, would permit the Court to continue to serve the Organization well.

16. Regarding specific proposals for amendments to the Statute that had been made over the years, she rejected the suggestion that there should be an end to the institution of the judge ad hoc that was provided for in Article 31 of the Statute, as there was real value in an institution that strengthened the confidence of every State that its arguments and equities would be fully appreciated and duly considered as part of the Court's deliberations. Elimination of that institution could deter some States from consenting to the Court's jurisdiction. Regarding the question whether international organizations should be afforded broader scope to participate in proceedings before the Court, she noted that, currently, under the Statute, international organizations might be involved in Court proceedings in various capacities. Most notably, they might be authorized to participate in advisory proceedings on the same terms as States if they were deemed likely to be able to furnish information on the question at hand. However, Article 34, paragraph 1, of the Statute provided that only States could be parties in contentious cases before the Court.

17. For decades, there had been calls to revise the Statute so as to permit international organizations to be parties in contentious proceedings. For proponents of an expansion of Article 34, that would align the scope of the Court's jurisdiction with the contemporary role of international organizations. She had not found convincing the suggestions that the Statute should be amended to place international organizations on an equal footing with States in their access to courts in contentious cases. It would be difficult to transpose much of the jurisprudence that had developed under the Statute to disputes involving international organizations. However, a more modest amendment could be inspired by the United Nations Convention on the Law of the Sea, which was open for signature or accession by any intergovernmental organization constituted by States to which its member States had transferred competence over matters governed by the Convention, including the competence to enter into

treaties. The Statute of the International Tribunal for the Law of the Sea provided, accordingly, that the Tribunal would be open to those organizations. In a similar vein, an amendment to the Court's Statute could permit regional integration organizations to appear as parties in contentious proceedings before the Court in respect of matters for which their member States had transferred competence to them.

18. The procedure for the nomination and election of judges set out in the Statute was sometimes put forward as an aspect in need of broad reform. The Statute of the Court, like that of its predecessor, the Permanent Court of International Justice, provided for a system of indirect nomination whereby member States of the Court were elected by the General Assembly and the Security Council from a list of persons nominated by national groups. That procedure was intended to provide an element of independence from national Governments. Some legal scholars had lamented the fact that, in many States, the drafters' goal of insulating the nomination process from domestic politics had not been realized. Scholars had also observed the limited fidelity, in practice, to Article 6 of the Statute, which recommended broad consultations by national groups before nominations were made. Nevertheless, even if the advantages of the current nomination system had not been realized, it was difficult to see its disadvantages.

19. Regarding the election process, the primary criticisms pointed not to the provisions of the Statute, but rather to the fact that vote-trading and other practices that featured generally in United Nations elections had taken hold in Court elections as well. Regardless of one's views on such practices, an amendment to the Statute did not have the potential to change them. There was, however, one limited proposal to eliminate the possibility of electing judges for successive terms that did deserve serious future consideration. Under the current system, one third of the bench was elected by the General Assembly and the Security Council every three years, and judges served for renewable terms of nine years.

20. For decades, experts and close observers of the Court had noted that it could be desirable to eliminate the possibility of re-election, as a further demonstration of the independence and impartiality of members of the Court. That idea of non-renewability for judges, which had been adopted by certain other international and regional courts, was often accompanied by a proposal to lengthen the tenure of judges, so as to ensure sufficient stability and continuity in the Court's work. In that regard, one possible amendment to the Statute could be to limit the tenure of judges to a single, 12-year term. Provision would also need to be made for filling occasional vacancies resulting from the death or resignation of a judge, as had been done in the Rome Statute of the International Criminal Court.

21. Two additional amendments to the Statute would also be essential if the Court were to truly serve as a world court. First, the verbiage in Article 38 suggesting that some States were considered "civilized" while others were not should be removed. Second, the entire Charter and the Statute should be redrafted in a gender-inclusive manner. The Court itself had just completed the process of updating the Rules of Court, the Resolution concerning the Internal Judicial Practice of the Court and the Practice Directions to use gender-inclusive formulations, in both of the official languages of the Court, French and English. Those efforts could serve as a model for similar amendments of the Statute itself.

22. Other proposals for revisions to the Statute and others that might arise in the future merited further reflection. Any serious consideration of possible amendments to the Statute should be based on a structured, comprehensive and inclusive process that began with a clear identification of the role of and expectations for the Court. Most importantly, the structural provisions that were foundational to the Court should only be revamped if there was a compelling reason to do so. She hoped that Member States, in the context of a possible revision of the Statute, would give priority to the imperative of maintaining the Court as a credible, independent and authoritative forum. Since her election to the Court in 2010, it had had before it 58 cases and 116 States had participated in proceedings. It was her hope that States' exposure to the Court would lead them to continue to show their trust and provide it with the support it needed to meet its mandate.

23. **The Chair**, speaking in his personal capacity, referring to the possibility of regional integration organizations appearing as parties in contentious proceedings before the Court in the future, asked whether the Court would have to rule on whether competence to appear as a party had been transferred to such an organization by its member States before the organization could appear. He also asked what would happen when such organization brought a case before the Court against one of its member States.

24. **Ms. Donoghue** (President of the International Court of Justice) said that many regional economic integration organizations included formulations in their founding treaties similar to the one she had referred to in the United Nations Convention on the Law of the Sea. If the Court's Statute were to be amended to allow international organizations to appear as parties in

proceedings, the Court might have to consider whether to set out in the Statute specific criteria that must be met. The Court might also decide to give itself the latitude to decide whether particular organizations met the criteria under certain circumstances. The most important factor providing the logical basis to permit such organizations to appear in the Court would be the transfer of competence to enable them to perform functions that States normally performed.

25. **Mr. Lefeber** (Kingdom of the Netherlands) said that his Government welcomed the efforts made to revise the Rules of Court to make them more gender neutral. His delegation wondered whether the Court would consider further modernization of its administrative practices in respect of the joint participation of States in advisory proceedings, as joint applications, interventions and statements in such proceedings posed procedural challenges to the Governments involved. In particular, the logistical obstacles posed by the requirement that all documents must bear wet signatures could be addressed by allowing electronic signatures, particularly on subsequent submissions. In addition, information sessions that required the attendance of all agents of States that operated jointly could be conducted virtually. Given that electronic processing was the way of the future, and in view of the practice of other international courts, his delegation would like to know whether it would be possible to institute an electronic filing system at the Court.

26. **Ms. Donoghue** (President of the International Court of Justice) said that Member States had different views regarding preferred working methods. Many judges were comfortable working with paper documents, which were particularly necessary in cases with heavy evidence, including maps. Regarding the joint participation of States in proceedings, she noted that the Court had welcomed and encouraged joint oral submissions in one context, which had been in an effort to manage the equality of oral proceedings by intervenors in a case involving 32 intervening States. The Court, however, did not have a particular initiative in place to welcome joint applications, although they were available to States and manageable from the Court's perspective. The Registrar would likely consider possible changes and put forward proposals to the Court to address logistical challenges in such applications.

27. Regarding virtual meetings, she noted that the Court had operated on a hybrid basis for a period during the coronavirus disease (COVID-19) pandemic but had never conducted fully virtual hearings or proceedings. The Court had subsequently acknowledged that cost savings and greater efficiencies would be possible if virtual methods were used more regularly, but the consensus had been that the nature of the Court's work was such that it was beneficial to have all proceedings, including individual meetings with parties, conducted in person.

28. **Ms. Flores Soto** (El Salvador) said that her delegation welcomed and supported the proposal to amend the Statute of the Court to make it gender neutral. It wondered whether the Court could offer guidance to the General Assembly, at the current meeting or perhaps in a future information session, regarding how it had succeeded in introducing gender-sensitive wording into its procedural documents. By way of context, there had been proposals within the Assembly to amend its Rules of Procedure to use gender-inclusive wording, but there had been a lack of engagement in the negotiations. Coordination between the Court and other entities of the United Nations system would offer insight into the valuable practices implemented by all United Nations entities, such as those being implemented by the Court.

29. **Ms. Donoghue** (President of the International Court of Justice) said that, a few years previously, when the post of the Deputy Registrar had come up for renewal, it had been found that the Court's procedural provisions had indicated that the Deputy Registrar – and the Registrar – were to be selected among individuals nominated by the members of the Court through what could be called an "old boys' club" process, and that only the "he" pronoun had been used in the Rules in reference to the two posts. It had been decided that the nomination process should be modernized so that persons from outside the Court could apply and that the Rules should be amended to include gender-inclusive wording. More recently, the Rules Committee of the Court had decided to also revise other Court documents to ensure that they were gender inclusive, in both French and English. That process had involved analysis of formulations used in other international courts and close collaboration with French-speaking judges in particular to resolve linguistic problems. It had been an intense effort that had had the full support of the Court, but doubtless presented fewer challenges than such an effort would entail in the General Assembly, as it had depended on the consensus of only 15 judges.

30. **Ms. Hutchison** (Australia), noting that the Court was increasingly called upon to contextualize its legal deliberations within complex technical matters, said that her delegation would like to know whether the Court's existing framework provided for the use of tools such as site visits, expert opinions and other forms of independent information-gathering that it could use for its deliberations in both contentious cases and advisory proceedings.

31. **Ms. Donoghue** (President of the International Court of Justice) said that the Court had the ability to appoint its own experts, although the views of judges on the use of experts tended to correlate with their legal background, with those coming from a civil law perspective favouring the practice more than those from countries with a common law system. Generally, the view was that the evidence was sufficient if the parties had presented their own experts. There had been cases where the Court had hired its own experts, but such cases required requests for additional budgetary support, which were usually for small sums and were granted. Site visits were also possible, but that method was rarely used by the Court.

32. **Mr. Hitti** (Lebanon) said that his delegation would like to know whether the current state of the Court's workload and resources could affect its capacity to hear cases within reasonable timeframes. Linguistic diversity in judicial proceedings was very valuable, as it reflected the diversity of legal traditions. In that connection, his delegation would be interested to know whether, in practice, the Court used both of its official languages in its deliberations.

33. **Ms. Donoghue** (President of the International Court of Justice) said that the working methods of the Court favoured inclusiveness and collaboration over speed. While judges might on occasion meet informally with one another and speak whatever language they chose, all formal proceedings were conducted in the two official languages. Simultaneous interpreting was provided for most sessions, with consecutive interpreting being used occasionally for very short meetings. All documents submitted were translated so as to be available in both languages, with the exception of certain annexes which, in the assessment of the Registry, did not need to be translated. Most of the Court's judges were able to work to at least some degree in both of the official languages, but those who could not, or did not wish to, were fully able to participate in its work. The use of both English and French enriched the Court's work greatly by prompting deliberations about differences between civil law and common law understandings of issues under consideration.

34. **Mr. Escobar Ullauri** (Ecuador) said that fellowships were an ideal way to both raise awareness of the Court's work and equip States to engage with it. His delegation understood that the Court had budget limitations but would nevertheless be interested to know whether it had considered expanding its Judicial Fellowship Programme.

35. **Ms. Donoghue** (President of the International Court of Justice) said that under the Judicial Fellowship Programme, each of the Court's judges was assigned a fellow. Those fellows had traditionally been supported financially by institutions, usually the universities from which they had graduated. In 2021, the Secretary-General had established a trust fund to provide financial support for fellows who had graduated from institutions in developing countries that did not have the financial means to cover the costs associated with the fellowship. The trust fund was well funded, primarily through contributions from Member States. The Programme was very successful, and the Court was grateful for the contributions that enabled its implementation.

36. The Court did not have any budget to conduct external training. However, the Registry was always ready to help States that were interested in participating in proceedings to understand the Court's procedures. In that connection, the Court had recently published a note for States and international organizations on the procedure followed by the Court in advisory proceedings, with a view to assisting the many States that were currently expressing interest in participating in such proceedings.

37. **Mr. Mousavi** (Islamic Republic of Iran) said that his country strongly supported the pacific settlement of disputes between States and was a party to four cases currently before the Court. His delegation would be interested to know what steps the Court could take to promote the implementation of orders on provisional measures, which were binding, before judgments on the merit.

38. **Ms. Donoghue** (President of the International Court of Justice) said that the Court had repeatedly reaffirmed that orders on provisional measures were binding. However, it did not determine whether such orders had been complied with until the case in question had reached the merits stage.

39. **Ms. Solano Ramirez** (Colombia) said that Spanish needed to be an official language of the Court, in order to enable cases to be conducted in Spanish, widen the pool of potential judges and allow the Court to benefit from the extensive international law practice of Latin America. With regard to advisory proceedings, her delegation would like to know whether it would be useful for the Court to allow international organizations, academics and other experts to submit relevant information and observations. The Inter-American Court of Human Rights had benefited greatly from such a system.

40. **Ms. Donoghue** (President of the International Court of Justice) said that expanding the official languages of the Court would require its Statute to be amended, which the Court itself did not have the

authority to do. In practice, there had been cases where the parties were both Spanish-speaking and had provided support for the proceedings to be interpreted into Spanish. However, even in those cases the documents had been submitted in English and French only, and the Court had been addressed in those languages. It would be difficult for the Court to take any additional measures within the confines of its current Statute.

41. Intergovernmental organizations that were considered to be in a position to provide information on the question posed were allowed to participate in advisory proceedings. Three had been allowed to participate in the proceedings related to the request for an advisory opinion concerning the Occupied Palestinian Territory, and eight in the proceedings regarding the request for an advisory opinion on the obligations of States in respect of climate change. Non-governmental organizations and academics were able to submit written contributions, which were made available to participants in the proceedings. Under the Court's current Practice Directions, contributions submitted by non-governmental organizations would be placed in a designated location in the Peace Palace. That wording could be updated to reflect the fact that participants no longer had to physically go to the Peace Palace in order to see the submissions. However, it was not likely that non-governmental organizations or academics would be allowed to appear in their own right in proceedings in the near future. That was because there was apprehension within the Court that being broadly open to the participation of non-State entities would lead to an undesirable shift away from its focus on serving States.

42. **Ms. Tang** (Thailand) said that her delegation would be interested to know what advice the President of the Court could give to countries trying to decide whether to settle a dispute through the Court or through alternative means of dispute resolution, taking into account factors such as the political implications of recourse to the Court and the costs and time involved in different forms of dispute resolution.

43. **Ms. Donoghue** (President of the International Court of Justice) said that she encouraged States to consider as many options as possible when deciding how to settle a dispute. It was often necessary to use a combination of dispute settlement methods in order to resolve all aspects of complex disputes. While cost was not the only consideration, States should bear in mind that the costs of proceedings before the International Court of Justice were borne by the United Nations, whereas the parties were responsible for the costs associated with arbitration or ad hoc conciliation proceedings. States should also carefully consider what practical outcome would be most beneficial to them and how they were most likely to obtain it. In some circumstances, States preferred to have disputes settled by the Court because, if they prevailed, the imprimatur of the Court would be particularly effective in achieving the outcome that they sought. However, in other situations, the desired outcome could be achieved through arbitration or conciliation.

44. **Ms. Essaias** (Eritrea) said her delegation would be interested to know whether coordinated interventions by large numbers of States asserting their right, under Article 63 of the Statute of the Court, to intervene in proceedings were likely to put pressure on the Court.

45. **Ms. Donoghue** (President of the International Court of Justice) said that pursuant to Article 63 of the Statute of the Court, all States parties to a convention that was at issue in a particular case had a right to intervene in that case. Therefore, the Court was almost always bound to find declarations of intervention admissible. In one case with a large number of interveners, the Court had found one declaration of intervention inadmissible for a very specific reason related to a reservation that the submitting State had made to the convention at the centre of the case.

46. Under Article 63, the participation of interveners was limited to advising the Court on the construction of the convention at issue. The Court could take all interpretations put to it into account, whether they were expressed by the two parties only, the two parties and one intervener, or a large number of interveners. There was possibly a political interest for a State in having a large group of interveners support its interpretation, but any such political dimension had no bearing on the Court's findings.

Agenda item 79: Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions (*continued*) (A/78/10)

47. **The Chair** invited the Committee to continue its consideration of chapters I to IV, VIII and X of the report of the International Law Commission on the work of its seventy-fourth session (A/78/10).

48. **Mr. Musikhin** (Russian Federation), referring to "Other decisions and conclusions of the Commission", said that his delegation welcomed the International Law Commission's decision to include the topic "Non-legally binding international agreements" in its programme of work, in view of the rapid increase in the number of instruments concluded by States and international organizations that were not treaties. It was therefore important to identify and determine the

potential legal implications of non-legally binding agreements. Under the Constitution of the Russian Federation, only treaties and universally recognized principles and rules of international law were part of the national legal framework. Therefore, a non-legally binding agreement must not defeat the provisions of a treaty in force. His delegation agreed with the Special Rapporteur's proposal, set out in the Commission's report on the work of its seventy-third session (A/77/10), to exclude from the scope of the study agreements resulting from the combination of several unilateral acts, agreements concluded with non-State entities and agreements that fell under domestic law. His delegation agreed with the Special Rapporteur that the study should include acts elaborated in informal frameworks, but it disagreed that non-legally binding agreements concluded by international organizations should be excluded. The Commission's study would clarify and bring order to inconsistencies in practice regarding non-legally binding international agreements.

49. His delegation welcomed the Commission's traditional exchanges of information with the African Union Commission on International Law, the Asian-African Legal Consultative Organization and the Inter-American Juridical Committee. By contrast, it deplored the attempt made by the Chair of the Committee of Legal Advisers on Public International Law of the Council of Europe, Helmut Tichy, and the Legal Adviser to the Council of Europe, Jörg Polakiewicz, to make political statements at the Commission's 3638th meeting. His delegation was pleased that the Commission's members had had the good judgment not to take the bait. It also fully agreed with Commission member Mr. Patel, who had expressed the view that such statements should not have been brought before the Commission, which should instead work constructively in accordance with its mandate.

50. Turning to the topic "General principles of law", he said that most of the points raised by his delegation at previous sessions remained pertinent. The draft conclusions on general principles of law adopted by the Commission on first reading did not contain a definition of the term "general principles of law" or provide a clear explanation of what was meant by that concept. That was needed in order to differentiate such principles from the principles enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 1970, and from rules of customary international law.

51. It was difficult to understand the essence and functions of general principles of law based on draft conclusion 10 (Functions of general principles of law) and the commentary thereto, which allowed for three interpretations: that general principles of law could be rules of international law from which flowed the rights and responsibilities of States and the violation of which gave rise to international legal responsibility; that they were fundamental political and legal ideas that were principles of a higher order than rules of international law; and that they were interpretative techniques that could help fill lacunae to ensure the optimal application of norms. In particular, it was unclear how the fundamental principle of *pacta sunt servanda* could be put on an equal footing with the important, but technical, principle of *lex posterior*, as it was in paragraph (6) of the commentary to the draft conclusion.

52. If general principles of law, unlike rules contained in treaties and customary international law, were not in fact rules of international law, then it remained doubtful whether they could be considered a separate source of international law. In the view of his delegation, the phrase "principle of law" was sometimes used in the decisions of courts and tribunals, teachings and treaties and domestic laws not to refer to Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice, but as a synonym of the term "legal norm" or to mean "a particularly important legal norm".

53. If general principles of law were indeed rules of international law, then, like the rules contained in treaties and customary international law, they must be the expression of the will of States. In that case, his delegation continued to have concerns regarding the mechanism of transposition of a general principle of law from national legal systems to the international legal system. The Commission stated in draft conclusion 6, on the determination of a transposition to the international legal system, that a general principle of law could be transposed to the international legal system. However, it also followed from paragraph (7) of the commentary to that draft conclusion that if a principle common to the various legal systems of the world was suitable for application within the framework of the international legal system, it could generally be inferred that the community of nations had recognized that it had been transposed. That was a legal fiction.

54. The Commission was correct to state, in the same commentary, that no formal act of transposition was required, but transposition did not occur automatically. As currently worded, the draft conclusion and the commentary thereto suggested that rules of customary international law could be passed off as general principles of law, without having to meet all the requirements, and imposed upon States without their consent. His delegation rejected that scenario and proposed that it should be clarified in draft conclusion

2, on recognition, that a general principle of law must be not only "recognized" by the community of nations, but also recognized as applicable within the international legal system.

55. His delegation disagreed with the Commission's statement in paragraph 1 of draft conclusion 11, on the relationship between general principles of law and treaties and customary international law, that general principles of law were not in a hierarchical relationship with treaties and customary international law. An informal hierarchy did exist and was reflected in the order in which the sources were listed in Article 38 of the Statute of the International Court of Justice. That point was also reflected in paragraph 1 of draft conclusion 10, according to which general principles of law were mainly resorted to when other rules did not resolve a particular issue.

56. His delegation had also repeatedly pointed out that the idea that general principles of law might exist in parallel with a rule of the same content in a treaty or customary international law, as stated in paragraph 2 of draft conclusion 11, was illogical. As with the question of transposition, paragraph 2 and the commentary allowed for the possibility that the supposed existence of a general principle of law could be used to impose an obligation on a State without its consent in the context of a treaty or a customary norm.

57. Given the uncertainty surrounding the legal nature of general principles of law, the mechanism through which they emerged and were applied, and their functions in the international legal system, the Commission should consider recognizing general principles of law as a transitory source of law. According to some teachings, when a general principle of law became a rule in a treaty or customary international law, it would be absorbed by said treaty or customary international law and cease to exist. Thus, general principles of law would not be recognized as an independent basis for the rights and obligations of States under international law, but they would still aid in interpretation of, filling of lacunae in and ensuring the coherence of the international legal system. General principles of law would serve an ancillary role by providing the historical backdrop to the emergence of rules in treaties and customary international law. Lastly, his delegation was of the view that the Commission should not rush in its consideration of the topic and that, in view of the large number of unresolved questions, its output should not necessarily take the form of draft conclusions.

58. Turning to the topic "Sea-level rise in relation to international law" and the additional paper (A/CN.4/761 and A/CN.4/761/Add.1) to the first issues paper on the topic, he said that his delegation welcomed the additional study of the principle of equity, the principle that "the land dominates the sea", the principle of immutability and intangibility of boundaries and the principle of fundamental change of circumstance (*rebus sic stantibus*) as set out in article 62, paragraph 2, of the Vienna Convention on the Law of Treaties. It was also important to examine the possible benefits and losses to third States and the purpose of nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation.

59. As sea-level rise was a global natural phenomenon, his delegation was troubled by the statement in paragraph 153 of the Commission's report that "sea-level rise was not a natural phenomenon, but was human-caused". Determining the causes of sea-level rise lay outside the Commission's mandate and should not affect its consideration of the legal aspects of sea-level rise. Considering that sea-level rise was a global and long-lasting phenomenon and could cause the partial or complete submerging of the territories of some States, further study was needed of the concept of "specially affected State".

60. His delegation held the view that the principle that "the land dominates the sea" was an important rule of customary international law. It also agreed with the view expressed by some members of the Commission that the rights over maritime spaces depended not on the land per se, but on sovereignty over the coastline. His delegation urged caution with regard to the argument that the principle *rebus sic stantibus* could not be applied to maritime spaces on the grounds that the principle of legal stability and certainty applied.

61. It was important to avoid the fragmentation of applicable rules of maritime law and ensure adherence to the United Nations Convention on the Law of the Sea, including its purposes and principles, and the balance struck in the Convention. The positions of developed and developing States, both coastal and landlocked, from all regions should be taken into consideration. His delegation supported continued work on the topic, noting that the new concepts of "climate displacement", "climate refugees" and "climate statelessness" needed to be discussed in the context of the rights of persons affected by sea-level rise.

62. Speaking in exercise of the right of reply in response to the statement made by the representative of Ukraine on the topic of immunity of State officials from foreign criminal jurisdiction at the previous meeting (see A/C.6/78/SR.25), he said that the intervention had been a misuse of the Committee's time, as the topic was

not on the Committee's agenda or among the topics under consideration at the current meeting. The views expressed by the representative of Ukraine on exceptions to immunity were not in the spirit of current international law and appeared to apply only to certain Russian officials. His delegation took it that Ukraine intended to include in its list of exceptions to immunity the crimes committed by Ukrainian officials and the sponsors of the Kyiv regime.

The meeting rose at 4.50 p.m.