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Chair: Mr. Milano (Vice-Chair) . . . . . (Italy)

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In the absence of Mr. Chindawongse (Thailand), Mr. Milano (Italy), Vice-Chair, took the Chair.

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

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

1. **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).

2. **Mr. Luteru** (Samoa), speaking on behalf of the Alliance of Small Island States and referring to the topic "Sea-level rise in relation to international law", said that small island developing States were especially affected by sea-level rise and were uniquely vulnerable to global crises. They were therefore committed to engaging in the development and application of international law to secure their rights in the context of anthropogenic sea-level rise.

3. The members of the Alliance had repeatedly made their interpretation of the law of the sea clear at the highest levels of government: States were not obligated under the United Nations Convention on the Law of the Sea to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates deposited with the Secretary-General. Such maritime zones and the rights and entitlements that flowed from them continued to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. Many nations supported that interpretation, including large coastal States, such as the United States of America, which had recognized the need for States to have continued access to their marine resources and the importance of ensuring legal stability, security, certainty and predictability.

4. Referring to the additional paper (A/CN.4/761 and A/CN.4/761/Add.1) to the first issues paper prepared by the Co-Chairs of the Study Group on sea-level rise in relation to international law, he said that it was the Alliance's view that the principle of *uti possidetis juris* was applicable to the situation of sea-level rise and that borders and maritime zones should remain unchanged to ensure legal stability, security, certainty and predictability. During the wave of decolonization in the twentieth century, the principle had served to preserve existing boundaries under international law, thereby maintaining legal stability and preventing the outbreak of conflict. In the context of anthropogenic climate change and sea-level rise, the principle remained vitally important in order to ensure legal stability and reduce the risk of conflict.

5. The principle of permanent sovereignty over natural resources was integral to the economic development of developing States. As a widely recognized principle of customary international law that had been affirmed by the International Court of Justice, it reinforced the need to preserve the maritime rights and entitlements of the members of the Alliance, including with respect to marine resources, and had already been incorporated into various international instruments.

6. With regard to the principle of equity, the climate crisis had not been caused by small island developing States, which accounted for some of the lowest emissions of greenhouse gases, yet they experienced some of the most devastating effects of sea-level rise. The principle of equity was enshrined in many international agreements, in particular the United Nations Convention on the Law of the Sea. For the members of the Alliance, the preservation of baselines and maritime zones and the rights and entitlements that flowed from them was not merely a matter of legal certainty and political stability, but also a matter of equity. That principle should therefore guide the Study Group in its work on the topic. The special needs and interests of small island developing States and their acute vulnerability to sea-level rise caused largely by the conduct of other States must not be forgotten as the Commission continued to determine how the Convention should be interpreted.

7. With regard to the question of statehood, it was clear from the past two centuries of State practice that there was a fundamental presumption of the continuity of statehood in international law. Sea-level rise related to climate change did not threaten the sovereignty and statehood of small island developing States, regardless of the physical changes wrought by the climate crisis. Changes to their sovereignty would occur only if they as individual States freely chose such changes. The Montevideo Convention on the Rights and Duties of States was not relevant to the question of continuity of statehood once statehood was established. It would be inequitable and unjust to strictly apply, in the context of rising sea levels, the criteria developed in that Convention nearly one century before, in a manner contrary to State practice. Once a State was established by a people expressing its right to self-determination through statehood, that statehood would cease only if another form of expression of the right to self-determination was explicitly sought and exercised by that people.

8. **Mr. Rakovec** (Slovenia), referring to the topic "General principles of law", said that the process of codifying general principles of law had always been difficult, because there had never been a consensus on their nature, scope and function, and there was no uniform practice among States and international courts and tribunals relating to general principles of law, especially in comparison with practice relating to other sources of international law. Nonetheless, it was undeniable that general principles of law had played an important role in international law throughout history and were an important independent source of international law.

9. With regard to the draft conclusions on general principles of law adopted by the Commission on first reading, his delegation agreed with the reference to recognition by the "community of nations", since the term "civilized nations" found in the Statute of the International Court of Justice was outdated. The term "community of nations" should not, however, be confused with the term "international community of States as a whole", used in article 53 of the Vienna Convention on the Law of Treaties in relation to *jus cogens* norms. His delegation considered the term "community of nations" to be widely accepted and welcomed the Commission's comment that all nations participated equally in the formation of general principles of law.

10. It was crucial that the Commission provide more guidance on the identification of general principles of law. His delegation supported the two-step approach to the identification of general principles derived from national legal systems, but a detailed methodology was needed so as to leave no room for interpretations that could lead to legal uncertainty. A precise methodology was also needed for the identification of general principles formed within the international legal system. The words "may be formed" in the phrase "a general principle of law that may be formed within the international legal system" in draft conclusion 7, paragraph 1, lacked the necessary legal precision.

11. General principles of law were regarded as *lex generalis* and were rarely applied in comparison with treaties and customary international law, which were *lex specialis*. His delegation therefore welcomed draft conclusion 11, which emphasized that general principles of law, as a source of international law, were not in a hierarchical relationship with treaties and customary international law. Rather, they had equal status and were not limited to the practical role of filling gaps. Lastly, his delegation would find useful a list of possible general principles of law formed within the international legal system, such as *uti possidetis* and *compétence-compétence*, that were reflected in the decisions of international tribunals.

12. With regard to the topic of sea-level rise in relation to international law, some regions would be affected more than others by sea-level rise, but the phenomenon would affect the global community as a whole. Indeed, it was already creating instability and conflict.

13. The United Nations Convention on the Law of the Sea provided a comprehensive legal framework for the interaction of States in respect of the oceans and contributed to international peace and security. As mentioned in the Commission's report (A/78/10), the concept of legal stability was encapsulated in the Convention. Slovenia therefore supported the view that the Convention did not forbid or exclude the option of fixing baselines and preserving maritime zones. Slovenia also supported the view that the Convention must be interpreted in such a way as to effectively address sea-level rise in order to provide practical guidance to affected States. In view of the challenges faced by nations whose territories could disappear as a result of sea-level rise, his delegation supported the Commission's proposal that the Study Group on sea-level rise in relation to international law address the subtopics of statehood and the protection of persons affected by sea-level rise in 2024.

14. Regarding "Other decisions and conclusions of the Commission", his delegation welcomed the appointment of a new Special Rapporteur for the topic "Immunity of State officials from foreign criminal jurisdiction", which was extremely important for achieving justice for atrocity crimes and ensuring the stability of international cooperation. His delegation was also pleased that the Commission had decided to include the topic "Non-legally binding international agreements" in its current programme of work and that it had appointed a Special Rapporteur for the topic.

15. His delegation welcomed the decision to reconstitute the Working Group on methods of work of the Commission and also welcomed the Working Group's exchange of views on the possibility of developing rules of procedure for the Commission and an internal practice manual on its working methods and procedures. Such documents would help States, international organizations and academics to understand the Commission's work better and would contribute to the transparency of that work. Item 2 of the Working Group's standing agenda, entitled "Relationship of the International Law Commission with the General Assembly and other bodies", was extremely important for improving interaction between the Commission and Member States. The Commission could not make

progress on the topics before it without sufficient input from States. His delegation hoped that more interaction would also encourage States to be more receptive to the findings of the Commission.

16. His delegation supported the programme of work of the Commission for the remainder of the quinquennium and its decision to hold a solemn meeting in 2024 to mark its seventy-fifth anniversary and its invaluable contribution to the codification and progressive development of international law. It also appreciated the Commission's recognition of the need for gender parity in its composition and acknowledged the contribution of women members to the Commission's work in several areas.

17. Lastly, Slovenia appreciated the Commission's work to promote the rule of law and was pleased to report a concrete contribution to that cause: the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes had been adopted in Ljubljana in May 2023. The new instrument, the culmination of a decade-long effort by Belgium, the Kingdom of the Netherlands, Argentina, Mongolia, Senegal and Slovenia, would help to bridge the impunity gap in international criminal law and enable the prosecution of the perpetrators of atrocity crimes at the national level. Many civil society organizations, which had been integral to the negotiation process, believed that the Convention's provisions reflected the progressive development of international law. The signing ceremony would take place in The Hague in February 2024; his delegation invited all States to sign and ratify the instrument.

18. **Mr. Ikondere** (Uganda) said that his delegation welcomed the election of the first female African member of the Commission. His delegation's increasing engagement with the work of the Commission was aimed at ensuring that the Commission drew inspiration from the principal legal systems of the world, including African customary law. His delegation valued the Commission's contribution to maintaining the rules-based international legal system founded on the Charter of the United Nations, taking into account the views of all Member States. The topics taken up by the Commission should be of relevance to the international community as a whole.

19. With regard to the topic "General principles of law", his delegation welcomed the adoption on first reading of the draft conclusions on general principles of law and the commentaries thereto. The legislation and practice of African States and their legal systems, which were often underrepresented in discussions on international law, should be taken into consideration by the Commission in its evaluations of general principles of law. With regard to draft conclusion 2 (Recognition), his delegation wished to highlight that general principles of law could be recognized only if they were norms that were accepted in African legal systems.

20. His delegation fully agreed with the objective two-step process for identification of general principles of law derived from national legal systems set out in draft conclusion 4. The first step of the process, which involved identifying the existence and content of a general principle of law derived from the various legal systems of the world, needed to be inclusive and take account of the various legal systems in which the principle was found. The second step involved an assessment of whether and, if so, to what extent, the principle identified could be transposed to the international legal system. It was possible, therefore, that a principle might be found to exist at the national level and yet prove to be unsuitable for application in the international legal system, which had its own distinctive features. His delegation welcomed the greater detail regarding the two-step process provided in draft conclusions 5 and 6 and the requirement that the comparative analysis of national legal systems undertaken to determine the existence of a principle common to the various legal systems of the world be wide and representative, including the different regions of the world. Such an analysis should take into account the practices of African States.

21. His delegation supported draft conclusion 7, which stated that, in order to determine the existence and content of a general principle of law that might be formed within the international legal system, it was necessary to ascertain that the community of nations had recognized the principle as intrinsic to the international legal system. While his delegation noted that paragraph 1 of the draft conclusion was without prejudice to the question of the possible existence of other general principles of law formed within the international legal system, it understood that paragraph 1 was needed because the key requirement that the general principle of law be intrinsic to the international legal system was supported by judicial and State practice; because the international legal system, like any other legal system, must be able to generate general principles of law that were specific to it; and because nothing in the text of Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice or in its drafting history limited general principles of law to those derived from national legal systems. Although, in many cases, general principles of law were derived from

national legal systems, there was no reason why the international legal system would be incapable of generating its own principles.

22. Regarding "Other decisions and conclusions of the Commission", his delegation noted that there were nine topics on the Commission's current programme of work and hoped that a balance would be struck so that the Commission was not overburdened. That said, if space was available on the current programme of work, there were still topics of significant interest to his delegation on the long-term programme of work, in particular the topic of universal criminal jurisdiction, that should be considered for inclusion in the current programme of work. His delegation welcomed the decision to reconstitute the Working Group on methods of work of the Commission and the establishment of a standing agenda of the Working Group. His delegation suggested that the Committee reciprocate by adding to its own agenda a standing item on its relationship with the Commission, in order to allow for an exchange of views on issues of shared interest, including the fate of the Commission's outputs. His delegation saw merit in the possible development of rules of procedure for the Commission and an internal practice manual on the working methods and procedures of the Commission. In particular, it would be worth addressing the simplification of the Commission's report, which had previously been requested by the Group of African States. His delegation also welcomed the Commission's endorsement of the recommendation of the Working Group that a new reporting practice be adopted whereby a brief summary of the Working Group's deliberations would be included in the Commission's annual report to the General Assembly.

23. His delegation was grateful to the Commission for its engagement in the fifty-seventh session of the International Law Seminar, which had provided participants with key knowledge on the current programme of work of the Commission. Ensuring inclusivity in international law education and giving opportunities to underrepresented groups to work in the field of international law would help to ensure a more equitable and just international legal system. His delegation was also pleased that webcasts of the Commission's plenary meetings were being made available, thereby increasing accessibility to the Commission's work.

24. **Ms. Kebe** (Sierra Leone) said that her delegation was among those that had provided critical leadership on gender issues in the General Assembly and was therefore pleased that the Commission had elected two of its female members to serve as Co-Chairs during its seventy-fourth session.

25. Her Government was committed to multilateralism and to maintaining the rules-based international legal order. However, there was currently inconsistency in the application and enforcement of international law. Her delegation therefore attached great importance to the Commission's mandate of promoting the progressive development of international law and its codification. The process of progressive development and codification must be inclusive, taking into consideration legal texts, State practice, precedents and doctrines, and drawing inspiration from the main legal systems of the world, including African sources and principles. To that end, her delegation engaged actively with the Commission's work, despite the challenges it faced as a small delegation.

26. With regard to the topic "General principles of law", that her delegation welcomed the adoption on first reading of the draft conclusions on general principles of law and the commentaries thereto. Given that the Commission's work on the topic constituted a continuation of its work on the sources of international law, her delegation was pleased to see that draft conclusion 1 (Scope) was clear and required no revision.

27. Draft conclusion 2 provided that, for a general principle of law to exist, it must be recognized by the "community of nations". Her delegation supported the use of the term "community of nations", which was taken from article 15, paragraph 2, of the International Covenant on Civil and Political Rights, instead of the anachronistic term "civilized nations" used in Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice. Efforts must be made to replace anachronistic and non-gender-neutral terminology in international law and at the United Nations; outdated colonial-era terms such as "civilized nations" had no place in a pluralistic world comprised of equal sovereign States. Her delegation supported the view of the President of the International Court of Justice in her statement to the Committee that the Court's Statute could be amended accordingly. Furthermore, the legislation and practice of African States and their legal systems, which were often underrepresented in international law discourse, should be taken into account in the evaluation of general principles of law. Indeed, general principles of law could be recognized only if they were norms that were accepted in African legal systems. In that connection, in order to determine the existence of a principle common to the various legal systems of the world, a wide and representative analysis of national legal systems must be undertaken.

28. Her delegation welcomed the confirmation in draft conclusion 3 (Categories of general principles of law)

that general principles of law were derived from national legal systems. The Commission had also determined that general principles might be formed within the international legal system. Given that that proposition was not without controversy, the use of the phrase "may be formed" in the wording of the draft conclusion was pragmatic and understandable.

29. Her delegation fully agreed with the objective two-step process for the identification of general principles of law derived from national legal systems set out in draft conclusion 4, which involved identifying the existence and content of a general principle of law common to the various legal systems of the world and an assessment of whether and, if so, to what extent, the principle identified could be transposed to the international legal system. It was possible, therefore, that a principle might be found to exist at the national level and yet be unsuitable for application in the international legal system. It was therefore important for the process to take into account the diversity of the various legal systems to which the general principle of law was common. Her delegation welcomed the greater detail regarding the two-step process provided in draft conclusions 5 and 6 and the requirement that the comparative analysis of national legal systems conducted to determine the existence of a principle common to the various legal systems of the world be wide and representative, including the different regions of the world. Her delegation noted that, according to draft conclusion 6, a general principle derived from national legal systems might be transposed to the international legal system insofar as it was compatible with that system.

30. Draft conclusion 7, which the Commission had been able to adopt, albeit with some controversy, provided in paragraph 1 that, to determine the existence and content of a general principle of law that might be formed within the international legal system, it was necessary to ascertain that the community of nations had recognized the principle as intrinsic to the international legal system. Paragraph 2 provided that paragraph 1 was without prejudice to the question of the possible existence of other general principles of law formed within the international legal system. The key requirement of recognition of the principle as intrinsic to the international legal system had been justified by the Commission on the basis that it was supported by judicial and State practice; that the international legal system, like any other legal system, must be able to generate general principles of law that were specific to it; and that nothing in the text of Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice or in its drafting history limited general principles of law to those derived from national legal systems. Her delegation could support the existence of general principles of law formed within the international legal system only when the specific principle in question reflected the diversity and pluralism of the contemporary international law landscape. The principle of sovereign equality of States was one such principle.

31. Turning to the topic of sea-level rise in relation to international law and commenting on various points raised in the Commission's report (A/78/10), she said that her delegation welcomed the recognition of the need for a clearer road map to meet the expectations of States, including in determining the form and content of the final report of the Study Group on sea-level rise in relation to international law. The Study Group should also propose concrete solutions to practical problems caused by sea-level rise and contemplate providing some practical guidance to States. As to the Commission's eventual output on the topic, her delegation suggested that it include an examination of each of the subtopics considered by the Study Group and welcomed the suggestion of preparing an interpretative declaration on the United Nations Convention on the Law of the Sea, which could serve as a basis for future negotiations between States parties. Such a declaration could address the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones. In that connection, her delegation welcomed the emphasis placed on the importance of further exploring the issue of submerged territories. Any outcome of the Commission's work on the topic should guarantee the sovereign rights of States over their maritime spaces. Her delegation encouraged the Commission to take a balanced approach to progressive development, as necessary, and also to work within the existing international rules. The Commission should also take into account the work of other bodies, in view of the objective of responding to the needs of Member States.

32. Regarding "Other decisions and conclusions of the Commission", her delegation took note of the Commission's decision to include the topic "Non-legally binding international agreements" in its current programme of work and to appoint a Special Rapporteur. Other topics of significant interest that were still on the long-term programme of work, such as the topic of universal criminal jurisdiction, should be considered for inclusion in the Commission's current programme of work. Her delegation had previously expressed interest in the codification of practice with regard to the exercise of universal jurisdiction in respect of sexual and gender-based crimes so as to address gaps in that regard.

33. Her delegation welcomed the decision of the Planning Group to establish the Working Group on the long-term programme of work for the current quinquennium and to reconstitute the Working Group on methods of work of the Commission. Her delegation saw great merit in the establishment of a standing agenda of the Working Group on methods of work and considered it vital to develop an internal practice manual on the working methods and procedures of the Commission so as to ensure consistency and predictability in decision-making. It supported the suggestion, referred to in the Commission's report, that the Working Group develop rules of procedure for the Commission so as to improve its methods of work, which should include the simplification of the Commission's report, as previously requested by the Group of African States. Her delegation also welcomed the Commission's endorsement of the recommendation of the Working Group that a new reporting practice be adopted whereby a summary of the Working Group's deliberations would be included in the Commission's annual report to the General Assembly.

34. Lastly, her delegation supported the Commission's call, referred to in its report, for contributions to the trust fund established pursuant to paragraph 37 of General Assembly resolution 77/103 to provide assistance to Special Rapporteurs of the Commission or Chairs of its Study Groups. The trust fund would assist in addressing structural issues that might disadvantage some members of the Commission, in particular those from African States and other States of the global South, who might wish to become Special Rapporteurs. Her Government would contribute to the trust fund as a sign of its commitment to diversity and the promotion of equal opportunity to contribute to the work of the Commission and the development of international law. Her delegation welcomed plans to mark the seventy-fifth anniversary of the Commission and called for diversity in the commemorative events.

35. **Ms. Frazier** (Malta), referring to the topic "Sea-level rise in relation to international law", said that sea-level rise had a direct impact on people and communities across the globe, constituting a threat to international peace and security. Regarding the need to ensure legal stability and security, Malta was of the view that sea-level rise could not be invoked as a fundamental change of circumstances, within the meaning of the Vienna Convention on the Law of Treaties, for the purpose of terminating or withdrawing from a treaty that established a maritime boundary, since maritime boundaries enjoyed the same regime of stability as any other boundaries. That conclusion was in line with the need to preserve the integrity of the United Nations Convention on the Law of the Sea and the balance of rights and obligations established therein, as well as with the mandate of the Study Group on sea-level rise in international law, which did not include proposing modifications to international law, including the Convention. Her delegation therefore fully supported the suggestion, referred to in the Commission's report (A/78/10), that the Study Group prepare practical guidance or provide practical legal solutions so as to ensure legal stability in the context of sea-level rise.

36. Issues relating to sea-level rise struck at the very heart of State sovereignty, with one of its most severe consequences being the potential loss of statehood. No effort should be spared to ensure that any sovereign nation whose territorial integrity was affected by sea-level rise did not lose any existing rights. Her Government took note of the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise issued by the Pacific Islands Forum in 2021, in accordance with which maritime zones, as established and notified to the Secretary-General in accordance with the United Nations Convention on the Law of the Sea, must continue to apply without reduction.

37. Malta was of the view that a territory was a prerequisite for the establishment of a State and that sovereignty referred to the whole territory under the State's control and not solely to the land territory. Thus, a territory that became partially inundated or fully submerged because of sea-level rise should not be considered a non-existent territory. Malta expected the Study Group to touch on that matter in its consolidated final report and firmly believed in the fundamental presumption of continuity of statehood, as affirmed by the Commission in its report on the work of its seventy-third session (A/77/10).

38. As an island State, Malta remained committed to ensuring that the voices of those States and peoples most affected by the threat of sea-level rise were heard and supported, and that peace and security in the oceans and seas were maintained. It looked forward to the issuance of advisory opinions by regional and universal bodies regarding the legal obligations of States with respect to climate change and hoped that they would contribute to the Commission's work on the topic.

39. **Ms. Solano Ramirez** (Colombia) said that her delegation welcomed the fact that two women had co-chaired the Commission at its seventy-fourth session and hoped that many more women would serve as Chair in the future. With regard to "Other decisions and conclusions of the Commission", her delegation welcomed the inclusion of the topic "Non-legally

binding international agreements” in the Commission’s current programme of work and the appointment of a Special Rapporteur for the topic. Colombia had extensive experience relevant to the topic and stood ready to share it with the Special Rapporteur and the Commission. Her delegation also welcomed the establishment of the Working Group on the long-term programme of work and the reconstitution of the Working Group on methods of work of the Commission. Both Working Groups would contribute to improving the Commission’s relationship with the Sixth Committee and would enable greater dialogue and coordination on topics on the long-term programme of work and the nature of the Commission’s outputs, as well as follow-up on the products currently under review in the Committee.

40. Turning to the topic “General principles of law”, she said that her delegation would submit written comments on the draft conclusions on general principles of law adopted by the Commission on first reading. It intended to comment, in particular, on the concept of general principles of law formed within the international legal system. It was concerned about the potential for discrepancies between the Commission’s approach to subsidiary means for the determination of general principles of law reflected in draft conclusion 8 (Decisions of courts and tribunals) and draft conclusion 9 (Teachings) and its work on the topic “Subsidiary means for the determination of rules of international law”. In that regard, the Commission should exercise extreme caution in its work on both topics so as to avoid contradictions between them.

41. With regard to draft conclusion 10 (Functions of general principles of law), her delegation was not convinced of the accuracy of the assertion that general principles of law were mainly resorted to when other rules of international law did not resolve a particular issue in whole or in part. The Statute of the International Court of Justice established no hierarchy among the sources of international law. The fact that some courts had used general principles of law to fill gaps under certain circumstances did not affect the legal nature of general principles of law as an autonomous source of law. Treating general principles of law as a lesser source of law could have dangerous consequences, calling into question their nature as an autonomous, primary source of international law.

42. Turning to the topic “Sea-level rise in relation to international law”, she said that the States of the global South should provide more input for the Commission’s work on issues that were of such critical importance to their future. For its part, Colombia was in the process of preparing comprehensive written comments on the topic with input from all relevant government authorities.

43. Given the broad scope of the additional paper (A/CN.4/761 and A/CN.4/761/Add.1) to the first issues paper prepared by the Co-Chairs of the Study Group on sea-level rise in relation to international law, her delegation was concerned that only two sessions of the Commission remained for the discussion of key questions of international law that were still open. In that connection, the scope of the future work of the Study Group, as described in the Commission’s report (A/78/10), was very broad and would be detrimental to that work. Furthermore, even though Colombia was a strong defender of the evolutionary interpretation of international law and favoured the progressive development of international law, it believed that the United Nations Convention on the Law of the Sea did not hold the answers to all the questions related to sea-level rise currently before the Study Group. The Commission should therefore take into consideration all relevant sources of international law, including other instruments relating to the law of the sea, customary law and general principles of law, in order to provide complete and meaningful answers to those questions. Such sources should, of course, be compatible with the Convention and should be viewed as additional or complementary to it in cases where the Convention could not fill all gaps.

44. Her delegation was concerned that many base points and baselines, as well as maritime boundaries between States, had not yet been established. In that regard, any emerging consensus on the preservation of existing maritime boundaries must balance concerns over sea-level rise and the need for States to establish their maritime boundaries in accordance with the applicable law of the sea.

45. Most importantly, the outcome of the Commission’s work on the topic should provide specific assistance to States. In that connection, her delegation was concerned about the legal nature of the final product to be issued by the Commission. It might be appropriate to expand the mandate of the Study Group so that the final product would be of true utility and significance for international law in general and the law of the sea in particular, enabling States to take concrete measures in response to the effects of sea-level rise.

46. **Mr. Lippwe** (Federated States of Micronesia), referring to the topic “General principles of law”, said that his delegation acknowledged the Commission’s adoption on first reading of the draft conclusions on general principles of law. It supported the inclusion of a draft conclusion recognizing the formation of general

principles of law within the international legal system but underscored the challenge of understanding what was meant by such principles being "intrinsic" to the international legal system. It welcomed the Commission's clarification that there was no formal hierarchy between general principles of law and the other sources of international law listed in Article 38 of the Statute of the International Court of Justice.

47. His delegation recalled the relevance of the customary laws and related practices of Indigenous Peoples and local communities to multiple national legal systems and to the international legal system. In that connection, it had taken note of draft conclusion 5, paragraph 3, and the associated commentary, in which the Commission identified "other relevant materials" as forming part of the comparative analysis of national legal systems to be conducted in order to determine the existence of a principle common to the various legal systems of the world. As indicated in the commentary, such materials could include customary law, which his delegation understood as encompassing the customary laws and related practices of Indigenous Peoples and local communities throughout the Pacific and elsewhere in the world.

48. The Commission indicated, in the commentary to draft conclusion 7, that the methodology used to determine whether a general principle of law was intrinsic to the international legal system was similar to the methodology applicable to the identification of general principles of law derived from national legal systems set out in draft conclusions 4, 5 and 6. In his delegation's view, the methodology for determining whether a general principle of law was intrinsic to the international legal system included recourse to "other relevant materials" beyond treaty law and the decisions of international tribunals, similar to the approach set out in draft conclusion 5, paragraph 3. Draft conclusion 7 or the commentary thereto should therefore be revised accordingly.

49. Turning to the topic "Sea-level rise in relation to international law", he said that, regarding the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones, his delegation wished to highlight the reference in the Commission's report (A/78/10) to the 2021 declarations of the Pacific Islands Forum and the Alliance of Small Island States, in which it was asserted that the United Nations Convention on the Law of the Sea imposed no affirmative obligation to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates, once deposited with the Secretary-General. Much of the international community had echoed that view after the declarations had been adopted. As indicated in the Commission's report, there existed subsequent practice that was relevant as a means of interpreting the Convention in line with the declarations of the Pacific Islands Forum and the Alliance of Small Island States; perhaps there were even subsequent agreements in that regard, at least among the States that had adopted the declarations. In response to the observation of the Co-Chair of the Study Group on sea-level rise in relation to international law, referred to in paragraph 161 of the Commission's report, that it was difficult to evaluate State practice given the decision of certain States not to update coordinates or charts deposited with the Secretary-General, his delegation wished to stress that a lack of action qualified as practice, especially when such lack of action was explained and justified by public declarations grounded in law, such as those of the Pacific Islands Forum and the Alliance of Small Island States. Those declarations represented sovereign intent, in the face of climate change-related sea-level rise, to maintain the status quo with respect to baselines and outer limits of maritime zones deposited with the Secretary-General.

50. His delegation agreed with the point made in paragraph 170 of the Commission's report that the principle of self-determination implied that States should not lose their right to territorial integrity or their permanent sovereignty over their natural resources, including maritime natural resources, as a result of climate change-related sea-level rise. That point applied to all aspects of the Commission's work on sea-level rise, not just issues related to the law of the sea.

51. His delegation supported the views expressed by some members of the Commission that equity, as a method under international law to achieve justice, should be applied in favour of the preservation of existing maritime rights and entitlements in the face of climate change-related sea-level rise. Small island developing States, such as the Federated States of Micronesia, were particularly vulnerable to sea-level rise but bore minimal responsibility for causing it. In that regard, they were specially affected States, and the principle of equity argued in their favour.

52. His delegation echoed the observation set out in the additional paper (A/CN.4/761) to the first issues paper on sea-level rise in relation to international law prepared by the Co-Chairs of the Study Group on the topic that the principle of permanent sovereignty over natural resources was a principle of customary international law that had played a vital role in the achievement of self-determination and economic development by developing countries, and that it applied equally to marine resources and terrestrial resources. As noted in the additional paper, the loss of

marine resources as a result of climate change-related sea-level rise would be contrary to that principle, and the legal preservation of rights and entitlements to such resources would be in line with the principle. Indeed, international law generally favoured legal stability with respect to the existence and scope of State sovereignty once lawfully established, including with regard to permanent sovereignty over natural resources.

53. The international community should be cautious about characterizing climate change-related sea-level rise as an existential threat in respect of the rights and entitlements that flowed from baselines and maritime zones deposited with the Secretary-General and in respect of the continuity of statehood. While sea-level rise did pose an existential threat in a physical sense, especially to atolls and low-lying islands and their residents, which were particularly vulnerable to the adverse effects of anthropogenic greenhouse gas emissions, that threat was separate from related legal considerations. As the growing body of State practice gathered by the Commission attested, the international community appeared to be coalescing around the view that international law protected States from being threatened in a legal sense by sea-level rise, at least with respect to matters related to the law of the sea and statehood. His delegation encouraged the international community and the Commission to maintain the distinction between existential physical threats and legal considerations with respect to climate change-related sea-level rise.

54. **Mr. Omar** (Malaysia), addressing the topic "General principles of law", said that, with regard to draft conclusion 6 of the draft conclusions on general principles of law adopted by the Commission on first reading, the test to determine whether a principle common to the various legal systems of the world was compatible with the international legal system should be conducted in relation to universally accepted norms that could be considered to reflect the basic structure of the international legal system. The compatibility test was important for determining the principle *in foro domestico* that was to be transposed to the international legal system. When deciding which general principles of law derived from the decisions of domestic courts or tribunals might be transposed to the international legal system, relevant factors such as the variety and diversity of national legal systems of the world must be considered. The compatibility test should be carried out with caution to identify the issues raised by States, such as whether a principle had been recognized by the community of nations and questions relating to particular treaties, customary rules or other international instruments.

55. His delegation supported the adoption of draft conclusions 8 (Decisions of courts and tribunals) and 9 (Teachings). Concerning draft conclusion 10, while there was consensus among Member States that general principles of law fulfilled the same functions as the other sources of international law and were not necessarily limited to gap-filling, caution must be exercised when determining the nature of general principles of law and their applicability to the issues raised before international courts and tribunals. Regarding draft conclusion 11 (Relationship between general principles of law and treaties and customary international law), his delegation supported the proposition that a general principle of law might exist in parallel with a rule of the same or similar content in customary international law. However, it should be acknowledged that the emergence of a general principle of law was dependent on its compatibility with every treaty and customary rule in the context in which it was to be applied. His delegation reserved the right to make further statements on the draft conclusions and would provide written comments and observations by the deadline of 1 December 2024. In that connection, it requested the Secretary-General to compile and circulate the comments and observations of Member States in a timely manner.

56. With regard to the topic "Sea-level rise in relation to international law", Malaysia shared the view of several Member States that there was no provision in the United Nations Convention on the Law of the Sea that obligated States parties to update their baselines or that prohibited the freezing of baselines. Since it was still a matter of debate whether baselines were permanent or ambulatory, his delegation suggested that the Study Group on sea-level rise in relation to international law explore the possibility of Member States directly affected by sea-level rise freezing their baselines on the basis of the coordinates or charts deposited with the Secretary-General. The Study Group should also further analyse the legal and practical implications of Member States relying on the coordinates or charts deposited with the Secretary-General and pre-existing coastlines to ensure the legal stability of maritime zones. As part of that analysis, the Study Group could consider the question of whether Member States would be entitled to rely on the continuity of their baselines or to justify any measures taken to address sea-level rise without taking any action such as publishing coordinates or charts with the Secretary-General or to concluding boundary agreements.

57. While his delegation did not underestimate the threat to the coastlines of Member States directly affected by climate change-related sea-level rise, it

believed that sea-level rise should not be used to legitimize measures to preserve maritime spaces without the existence of a credible scientific assessment that corroborated the risks posed. In cases where such scientific evidence was lacking, the question of the legality of the measures taken by the Member States to address the risks of sea-level rise could also be a matter of concern given the potential impact on the continuity of maritime zones. Measures undertaken by Member States to preserve their coastlines must be proportionate and address urgent risks. Any measures designed to enlarge coastlines under the pretext of sea-level rise posed risks to the legal stability of maritime zones and could create conflict, in particular with respect to areas that were yet to be delimited. It was thus important for the Study Group to consider the legality of measures taken to preserve coastlines. In that context, the Study Group should prepare concrete solutions to the practical problems of States directly affected by sea-level rise rather than considering possible interpretations of the Convention or preparing proposals to amend it.

58. **Ms. Vidoic Mesarek** (Croatia), referring to the topic "General principles of law", said that her delegation supported a cautious approach when discussing the contentious category of general principles of law formed within the international legal system, bearing in mind that international legal scholars generally considered that general principles of law could not be directly formed within the international legal system. Additional efforts must be made to further examine, elaborate and clarify the remaining issues relating to that particular category. In that regard, there should be a clear distinction between general principles of law and other sources of international law, especially customary law.

59. Regarding the draft conclusions on general principles of law adopted by the Commission on first reading, her delegation believed that the formulation of paragraph 2 of draft conclusion 7 (Identification of general principles of law formed within the international legal system), was still unclear and required further consideration. In particular, it was not clear what the phrase "other general principles of law" referred to. It was important to clearly determine the elements necessary for the recognition of general principles formed within the international legal system. Additional clarifications were also needed in order to avoid an incorrect conclusion that there were no differences between general principles of law and customary law. Furthermore, given that draft conclusion 8 established that the decisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of general principles of law were a subsidiary means for the determination of such principles, it was worth noting that the impartiality and independence of adjudication mechanisms were crucial general principles of law and a fundamental element of the rule of law at both the national and the international levels.

60. Although draft conclusion 10 (Functions of general principles of law) correctly reflected practice, its formulation could lead to the incorrect conclusion that the subsidiarity of general principles of law in relation to treaties and customary international law was based on the principle of hierarchy rather than on the principle of speciality. Since general principles of law were *lex generalis*, they tended to be applied rarely in comparison to treaties and customary international law, which were *lex specialis*. There was therefore no hierarchy between general principles of law and the other sources of international law; rather, there was a principle of speciality. Otherwise, general principles of law would have been included in Article 38, paragraph 1 (*d*), of the Statute of the international Court of Justice.

61. With regard to the topic "Sea-level rise in relation to international law", her delegation hoped that the recently adopted Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, in conjunction with other relevant international environmental instruments, would contribute to addressing the serious impacts of climate change, including sea-level rise. The fact that advisory opinions on matters related to climate change were pending at the International Tribunal for the Law of the Sea and the International Court of Justice demonstrated the importance of the issue.

62. Her delegation noted with interest the observation in paragraph 170 of the Commission's report (A/78/10) that the principle of self-determination implied that States should not lose their right to territorial integrity as a result of sea-level rise. In that regard, it was important to emphasize that the principle of self-determination was applicable to peoples and not to States, to which the principle of statehood was instead applicable. While the Commission should further examine and clarify how and where affected populations could exercise the principle of self-determination in relation to sea-level rise, it should also take a cautious approach, as State practice and *opinio juris* on the issue were non-existent.

63. Turning to the topic "Settlement of disputes to which international organizations are parties", she said that the first report of the Special Rapporteur (A/CN.4/756) offered a solid basis for the Commission's

work, which would be demanding, given that the scope of the topic was not limited to disputes regulated under international law. With regard to the draft guidelines on settlement of disputes to which international organizations are parties provisionally adopted by the Commission, her delegation suggested replacing the phrase "other entities" with the phrase "other sovereign entities" in the definition of the term "international organization" given in draft guideline 2 (a), in order to differentiate international organizations from other international bodies and entities and other subjects of international law.

64. Her delegation appreciated the importance the Commission had given to the topic "Succession of States in respect of State responsibility" and had taken note of the recommendations of the Working Group established to consider possible ways forward. The topic was of interest to Croatia in view of its own experience, in particular the fact that, even though more than 30 years had passed since the dissolution of the former Yugoslavia, the agreement on succession issues concluded in 2001 between five successor States had not been fully implemented. Her delegation hoped that the Commission would continue to elaborate further on the topic at its future sessions.

65. **Ms. Sandiori** (Indonesia), referring to the topic "General principles of law", said that her delegation welcomed the adoption on first reading of the draft conclusions on general principles of law and the commentaries thereto. The Commission's efforts had resulted in a much-needed articulation of the nature, scope and function of general principles of law, as well as of the criteria and methods for their identification. The Commission's work on the topic would also complement its work on the other sources of international law referred to in Article 38, paragraph 1, of the Statute of the International Court of Justice.

66. General principles of law were understood to be fundamental principles that had garnered acceptance across the community of nations and could be applied universally, irrespective of domestic law. While the Commission's work was largely commendable, some challenges persisted. For example, the identification and application of general principles of law could sometimes be ambiguous and subjective, and there was a need to ensure that those principles evolved in line with changing international realities, values and expectations.

67. With regard to the term "intrinsic", used in paragraph 1 of draft conclusion 7 (Identification of general principles of law formed within the international legal system), the definition provided in the commentary to the draft conclusion required further clarification. The caveat set out in paragraph 2 of the draft conclusion, indicating that paragraph 1 was without prejudice to the question of the possible existence of other general principles of law formed within the international legal system, might invalidate the requirement that a principle should be intrinsic to the international legal system. While her delegation recognized the possible existence of general principles of law that emerged from the international legal system, it noted that the methodology for determining their existence and content might be similar to the methodology for determining the existence and content of customary international law. Caution was therefore required in order to avoid confusion with other sources of international law. Despite those challenges, her delegation believed that the Commission's continued efforts to clarify and develop the draft conclusions were crucial.

68. Turning to the topic "Sea-level rise in relation to international law", she said that sea-level rise was already threatening the livelihoods and existence of people in at least 70 States around the world, including Indonesia, which stood in solidarity with fellow archipelagic and small island States in their efforts to ensure that the problem received the attention it deserved. As the world stood on the brink of potentially irreversible environmental changes, the Commission had a critical role to play in safeguarding the interests of all nations and ensuring a just and equitable framework to navigate the challenges ahead. It was essential to preserve statehood and territorial integrity. If not handled carefully, sea-level rise could alter existing maritime zone limits and boundaries, which would create uncertainty and conflict. The principles of legal stability, certainty and predictability should be respected and the balance of rights and obligations under the United Nations Convention on the Law of the Sea should be preserved. The stability of baselines and outer limits of maritime zones, as established under the Convention, should be maintained, irrespective of sea-level rise. Existing maritime boundary agreements should be respected; the law of treaties should prevail. Charts or lists of geographical coordinates of baselines that had been deposited with the Secretary-General pursuant to the Convention should also remain in effect.

69. **Mr. Ma** Xinmin (China) said that the multilateral international order established under the Charter of the United Nations was facing multiple challenges. Mutual trust and consensus were diminishing, which posed new challenges to the interpretation and implementation of international law. As the common interests and concerns of the international community continued to grow, so

did the demand for a legal framework governing the global commons and global public goods. Power structures were becoming more diverse, and developing countries and non-State actors were playing a greater role in international affairs. There was therefore an urgent need to improve the mechanisms and rules of global governance. His delegation hoped that the Commission would keep abreast of the changing circumstances. In particular, as an advisory body to the General Assembly, the Commission should take into account the practical needs of the international community and the views of Member States on the selection of topics and the form and content of the outcomes of its work. In addition, the Commission should take greater account of State practice and *opinio juris* so as to increase the credibility of its work and ensure its universal applicability. Furthermore, the Commission's work should be inclusive and reflect the diversity of legal systems and civilizations.

70. Referring to the topic "General principles of law", he said that his delegation welcomed the Commission's adoption on first reading of the draft conclusions on general principles of law and would submit written comments on the text at a later date. Draft conclusions 3 and 7 reflected the proposition that there were two categories of general principles of law: those that were derived from national legal systems and those formed within the international legal system. His delegation believed that the latter category required further consideration. It was difficult to distinguish general principles of law derived from the international legal system from customary international law, given that both were derived from general and consistent State practice. Moreover, the need for the category of general principles of law formed within the international legal system was questionable, and there was a lack of international practice supporting its existence. If, as suggested in draft conclusion 11, general principles of law could exist in parallel with rules of customary international law with the same or similar content, then customary international law could be applied directly without recourse to general principles of law.

71. With respect to the topic "Immunity of State officials from foreign criminal jurisdiction", his delegation had repeatedly expressed its concerns regarding draft articles 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply) and 18 (Settlement of disputes) of the draft articles on immunity of State officials from foreign criminal jurisdiction adopted by the Commission on first reading (see A/77/10). In its work on the topic, the Commission should strike a balance between upholding the principle of sovereign equality and seeking to eliminate impunity, so as to ensure that the outcome of its efforts contributed to achieving justice and maintaining friendly relations among States. The Commission's examination of State practice and *opinio juris* should fulfil the requirements of representation and universality. For instance, in the commentary to draft article 7, the Commission cited 15 decisions of national courts to support the assertion of a trend towards limiting the applicability of immunity from jurisdiction *ratione materiae*. In only eight of those cases did the courts explicitly rule out the application of immunity *ratione materiae*. In addition, all of those decisions had been issued by courts in European countries, which made the Commission's approach neither representative nor universal. Regarding the way forward on the topic, the Commission should not rush to complete the second reading but instead should further refine the draft articles by appropriately resolving differences of opinion and responding to the suggestions made by Member States over the years.

72. Referring to the topic "Sea-level rise in relation to international law", he said that the Study Group on sea-level rise in relation to international law should take a prudent and pragmatic approach as it advanced with its work. His delegation appreciated the recognition in the Commission's report (A/78/10) that the silence of affected States on the issue of sea-level rise did not necessarily reflect a particular position on the interpretation of the United Nations Convention on the Law of the Sea, or endorsement of or opposition to a particular rule; it might be that the State concerned had not yet developed the relevant *opinio juris*. The Commission should therefore refrain from proposing amendments to existing international law. The adoption of any interpretative declaration on the Convention, or the development of a draft framework convention, would exceed its mandate.

73. Regarding the legal basis for the Commission's work and the fixing of baselines, his delegation supported the Study Group's efforts to assess sources of law other than the Convention. Issues related to sea-level rise had not been under discussion at the time of conclusion of the Convention, which provided that fixed baselines could be established in only two cases: where the coastline was highly unstable because of the presence of a delta and other natural conditions; and in the case of the outer limits of the continental shelf. It should not be presumed that the Convention permitted the use of fixed baselines in other instances.

74. The Study Group should also give adequate consideration to the rules of general international law when analysing the Convention. His delegation supported the view expressed by the Co-Chairs of the

Study Group in the additional paper (A/CN.4/761) to the first issues paper on sea-level rise in relation to international law that the principle that "the land dominates the sea" should not be rigidly applied. However, in their discussion of that principle in the additional paper, the Co-Chairs cited judgments of the International Court of Justice reflecting the Court's view that the distance criterion superseded the principle of natural prolongation. His delegation did not agree with that view. The continental shelf was established on the basis of the principle of natural prolongation, which should therefore be fully respected.

75. Despite the fact that historic rights were recognized under general international law as an important basis for asserting maritime rights and interests, his delegation called for further assessment of the Study Group's view that the principle of historic rights could be applied to preserve existing maritime zones and the rights and interests that might be lost as a result of sea-level rise. It was inappropriate to emphasize that the principle of historic rights provided an example of the preservation of existing rights in maritime areas that would otherwise not be in accordance with international law. The position of China on the *South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China* case had been consistent and clear. The arbitral tribunal had exercised jurisdiction *ultra vires* and the award it had made was illegal, null and void. His delegation strongly urged the Commission not to invoke it as legal evidence.

76. His delegation welcomed the inclusion of the topic "Non-legally binding international agreements" in the Commission's programme of work and suggested that the Commission base its work on a thorough examination of State practice in order to produce convincing results. Given that international agreements were generally binding, his delegation supported changing the title of the topic to "Non-legally binding international instruments or arrangements".

77. **Mr. Gutiérrez** (Guatemala), speaking on the topic "General principles of international law", said that, in reference to the draft conclusions on general principles of law adopted by the Commission on first reading, his delegation supported the assertion in draft conclusion 5 that the comparative analysis to determine the existence of a principle common to the various legal systems of the world must be wide and representative and cover as many national legal systems as possible. It should also take into account the major legal traditions of the world. His delegation also attached importance to draft conclusion 6, which provided for a compatibility test to determine whether a principle common to the various legal systems of the world might be transposed to the international legal system.

78. With regard to draft conclusion 7, his delegation shared the concerns expressed by some Commission members regarding the existence of a category of general principles of law formed within the international legal system and hoped that the Special Rapporteur for the topic would continue to develop the methodology for identifying principles in that category with the aim of distinguishing it clearly from the category of general principles of law derived from national legal systems. It was worth noting that the general principles of law referred to in Article 38 of the Statute of the International Court of Justice were an autonomous source of international law, independent of treaties and customary law in terms of their formation. With respect to draft conclusions 8 and 9, his delegation agreed with the designation of jurisprudence and teachings as subsidiary means for determining the existence and content of general principles of law.

79. Concerning draft conclusions 10 (Functions of general principles of law) and 11 (Relationship between general principles of law and treaties and customary international law), his delegation believed that general principles of law were mainly resorted to when other rules of international law did not resolve a particular issue in whole or in part, with a view to avoiding a *non liquet*, and that general principles of law might be applied directly or simultaneously with other rules of international law to interpret or complement them.

80. Turning to the topic "Sea-level rise in relation to international law", he said that Guatemala was concerned about sea-level rise and its impact on the survival and quality of life of the populations of small island States and developing coastal States, in particular countries in Central America and the Caribbean. Of particular interest were the question of how to respond, from an international law perspective, to the impact of sea-level rise on the baselines established to determine maritime zones, and the question of the international legal personality of a State that could be completely inundated and the impact on its population. The Commission's approach should be based on international human rights law and focused on addressing the humanitarian consequences of sea-level rise. Sea-level rise threatened long-standing international norms related to the protection of human rights; the survival of the State and the preservation of its sovereignty over its territory and maritime spaces; the legal status of islands; and the exercise of the sovereign rights of States over their own natural resources. His delegation welcomed the efforts of the Commission to respond to those existential risks.

81. His delegation agreed with the view of members of the Study Group on sea-level rise in relation to international law, referred to in the Commission's report (A/78/10), that the concept of legal stability was encapsulated in the United Nations Convention on the Law of the Sea and contributed to the maintenance of international peace and security. The concept should be approached with caution as it was difficult to separate from other concepts, such as the principle of the immutability of boundaries.

82. His Government would submit written comments on the topic in due course.

83. **Mr. Sarufa** (Papua New Guinea) said that his delegation was pleased that several members of the Commission were participating in the meetings of the Committee during the current session of the General Assembly. It also welcomed the fact that women had taken on several leadership positions within the Commission during its most recent session.

84. With regard to the topic "Sea-level rise in relation to international law", his delegation commended the constructive and mutually beneficial engagement by members of the Commission, both with the Committee and with bilateral partners and regional entities such as the Pacific Islands Forum. In particular, it appreciated the active participation of three of the Co-Chairs of the Study Group on sea-level rise in relation to international law, in their personal capacities, in the Pacific Islands Forum regional conference on statehood and the protection of persons affected by sea-level rise, held in Fiji in March 2023. Papua New Guinea also strongly supported the plan by the President of the General Assembly to hold an informal meeting of the plenary on the existential threats of sea-level rise amidst the climate crisis.

85. As an archipelagic and maritime nation, Papua New Guinea considered the topic of sea-level rise in relation to international law to be critically important in the context of efforts to ensure a sustainable future and agreed with the Study Group's view, referred to in the Commission's report (A/78/10), that sea-level rise was of direct relevance to the question of peace and security. It welcomed the growing international interest in finding solutions to the challenges related to sea-level rise, as reflected by the submission of requests for advisory opinions on climate change-related matters to the International Tribunal for the Law of the Sea and the International Court of Justice.

86. His delegation noted with interest the views of Commission members, referred to in the Commission's report, on issues such as the meaning of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones; the immutability and intangibility of boundaries; fundamental change of circumstances; permanent sovereignty over natural resources; nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation; and the future work of the Study Group, including the possible issuance of a substantive report in 2025.

87. Preservation of the maritime rights of States was closely linked to the continuity of statehood, since only States could possess maritime zones. The Constitution of Papua New Guinea provided that its sovereignty over its territory, and over the natural resources of its territory, was and should remain absolute, subject only to its freely accepted obligations under international law. The principle of permanent sovereignty over natural resources had been set forth by the General Assembly in its resolution 1803 (XVII) and was consistent with articles 1 and 47 of the International Covenant on Civil and Political Rights and articles 1 and 25 of the International Covenant on Economic, Social and Cultural Rights. The Study Group should examine that principle further, including as an additional layer of support for the concept of the preservation of maritime entitlements, and for the continuity of statehood and the protection of persons affected by sea-level rise.

88. His delegation reaffirmed its support for the Study Group's preliminary observation, contained in the first issues paper (A/CN.4/740, A/CN.4/740/Corr.1 and A/CN.4/740/Add.1), that the United Nations Convention on the Law of the Sea did not exclude an approach based on the preservation of baselines and outer limits of maritime zones in the face of climate change-related sea-level rise, once information about such maritime zones had been established and deposited with the Secretary-General. In their Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, which had been favourably received by many members of the international community, the leaders of the Pacific Islands Forum had proclaimed that maritime zones, as established and notified to the Secretary-General in accordance with the Convention, and the rights and entitlements that flowed from them, should continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. They had also recorded their position that the proclamation was supported by both the Convention and the legal principles underpinning it.

89. Further regional developments related to statehood and the protection of persons affected by sea-level rise – the subtopics to which the Study Group would revert in 2024 – were expected in the near future. His delegation wished to affirm that international law

supported a presumption of continuity of statehood and did not contemplate its demise in the context of climate change-related sea-level rise. Moreover, it was critically important to protect the human rights, culture and cultural heritage, identity and dignity of persons affected by climate change-related sea-level rise, in addition to meeting their essential needs. The Commission should consider those key matters further.

90. **Mr. Esener** (Türkiye), referring to the topic "General principles of law" and the draft conclusions on general principles of law adopted by the Commission on first reading, said that his delegation continued to have doubts about the proposition that recognition of the transposition of a general principle of law from domestic legal systems to the international legal system would be implicit and did not require an express or formal act. It was stated in the commentary to draft conclusion 6 (Determination of transposition to the international legal system) that recognition was implicit when the "compatibility test" was fulfilled. However, only one example had been provided, in paragraph (5) of the commentary, and the rationale presented for the compatibility test was simply that the international legal system and national legal systems had distinct structures and characteristics that should not be overlooked. That explanation was not sufficient to allay his delegation's concerns.

91. Draft conclusion 4 (Identification of general principles of law derived from national legal systems) and the commentary to draft conclusion 6 touched on the issue of partial transposition. Further clarification was needed regarding the criteria to be applied to identify which parts of, and to what extent, a principle could be transposed to the international legal system.

92. The divergence of views within the Commission regarding the existence of general principles of law formed within the international legal system and the lack of a common doctrinal approach on the matter should be highlighted to Governments when the draft conclusions were transmitted to them for comments and observations. Without prejudice to his Government's future comments and observations, his delegation supported the call for caution, in the commentary to draft conclusion 8 (Decisions of courts and tribunals), with regard to separate and dissenting opinions of judges or arbitrators and with regard to the use of decisions of national courts as subsidiary means for the determination of general principles of law.

93. Turning to the topic "Sea-level rise in relation to international law", he said that sea-level rise was already impacting the lives and livelihoods of millions around the world, with a direct and overwhelming impact on the least developed and small island nations. His delegation supported the efforts of small island developing States to draw attention to the adverse impact of climate change on the oceans. While those States faced the most imminent threat, all coastal States would be affected by sea-level rise, and no country would be immune to the effects of climate change.

94. The United Nations Convention on the Law of the Sea did not address the current challenges, as sea-level rise had not been contemplated at the time of its negotiation. A balance between the rights of coastal States and the rights of third States must be maintained in the face of any changes in coastal conditions. As a coastal State itself, Türkiye would continue to work with all concerned States to address the challenges and urged the international community to engage in cooperation with a view to minimizing the consequences of sea-level rise. It stood ready to contribute to efforts under the auspices of the United Nations to support small island developing States and maintain legal certainty, security, predictability and stability in relation to maritime zones. It continued to support the consideration of the topic by the Commission and encouraged the Study Group on sea-level rise in relation to international law to give particular consideration to input from those countries most affected by sea-level rise.

95. Regarding "Other decisions and conclusions of the Commission", his delegation noted that the Commission had decided to include the topic "Non-legally binding international agreements" in its current programme of work, even though it had only been on the long-term programme of work since 2022. While there were no rules governing the transfer of a topic to the current programme of work, his delegation did not see a need for haste in respect of that particular topic, as it did not reflect a pressing concern of the international community as a whole. His delegation agreed with the Commission's statement in annex I to its report on the work of its seventy-third session (A/77/10) that the practice of non-legally binding international agreements had considerably grown. However, it appeared from the same annex that only one delegation had expressed a wish for the Commission to focus on the topic. Moreover, the topic was currently being examined by other international expert bodies, such as the Committee of Legal Advisers on Public International Law of the Council of Europe. The Commission would be well advised to follow the developments in those other bodies before embarking on its own work. Lastly, with regard to the title of the topic, the term "non-legally binding instruments" would be preferable to "non-legally binding agreements".

96. **Mr. Sarvarian** (Armenia), referring to the topic "General principles of law", said that his delegation would prefer the Commission's final output to be a set of draft articles, accompanied by commentaries, rather than draft conclusions. With regard to the draft conclusions on general principles of law adopted by the Commission on first reading, his delegation agreed with those that had suggested that the Commission further clarify, in the commentary to draft conclusion 5 (Determination of the existence of a principle common to the various legal systems of the world), the meaning of "a comparative analysis of national legal systems". In particular, a distinction could be drawn between national practice that concerned internal law matters and national practice that addressed questions of international law. While the identification of a quantitative threshold for the formation of a general principle of law would be difficult, as was the case for customary international law, it was important to identify with precision the qualitative nature of the "national practice" that would count towards the formation of a general principle of law.

97. Concerning draft conclusions 2 (Recognition), 7 (Identification of general principles of law formed within the international legal system) and 8 (Decisions of courts and tribunals), Armenia shared the doubts expressed by a number of delegations regarding the premise of a general principle being recognized by the community of nations as intrinsic to the international legal system. In practice, the principal source for the identification of general principles of law had been international courts and tribunals, not States. The procedural law of international courts and tribunals contained many rules, identified by their judges, that had originated in national legal systems (such as the principles of estoppel and acquiescence) or that resulted from logical deductions from the international legal system (such as the principle of *lex specialis derogat legi generali*). Those rules filled gaps in the statutes of international courts and tribunals in areas where there was no customary law. States would rarely find occasion to act on such matters except when they were involved in international litigation. The view, referred to in the Commission's report on the work of its seventy-first session (A/74/10), that there was insufficient State practice to support the existence of general principles formed within the international legal system reflected the continuing theoretical ambiguity regarding the role of judge-made law in the international legal system. In examining the issue, the Commission could make a significant contribution to the methodology followed in the exercise of judicial discretion, including in the identification and elaboration of general principles of law as logical deductions or predicates from treaty law and customary law. The real question was how judges had identified general principles of law as having been formed within the international legal system. While the arguments of disputing parties had likely played a part, it was also probable that judges had relied on logical predicates to fill gaps in the body of rules.

98. With regard to the topic of sea-level rise in relation to international law, his delegation recommended that the Commission take a decision in the near future concerning the scope of its work and potential outputs in order to enable it to effectively plan and structure its work. For certain issues, such as statehood and the protection of persons affected by sea-level rise, a report might be the best medium to communicate its findings, as had been the case for the topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law". For other questions, however, such as maritime entitlements, more tangible proposals for legal reform might be more suitable, for example, proposals to amend treaties in cases where the object of the treaty could not be achieved through reinterpretation of the existing text.

99. His delegation agreed with the view, referred to in the Commission's report (A/78/10), that the principle of *uti possidetis juris* was not helpful or relevant within the context of the topic, as it was a principle of customary international law that concerned respect for international borders in the context of State succession and could not be applied analogously in the distinct context of the loss or alteration of maritime boundaries due to the submergence of land. Given that borders had a "real" character independent of the treaty that established them, the Study Group on sea-level rise in relation to international law might do better to consider the law of territory rather than the law of treaties, focusing on cases concerning phenomena such as the melting of glaciers, the accretion of coastlines, and changes to riparian boundaries as a result of changes in watercourses. Armenia welcomed the Study Group's intention to focus in 2024 on the subtopics of statehood and the protection of persons affected by sea-level rise.

100. As for "Other decisions and conclusions of the Commission", his delegation welcomed the appointment of the Special Rapporteur for the topic "Non-legally binding international agreements" but considered that due time should be taken to reflect on the scope and utility of the topic. On the basis of the syllabus proposed in annex I to the Commission's report on the work of its seventy-third session (A/77/10), it appeared that the two principal issues that the Commission was planning to consider were the definition of non-legally binding international agreements and the direct or indirect effects in law of

such agreements. The second issue appeared to be related to the Commission's continuing work on the topic "Subsidiary means for the determination of rules of international law". Given the relatively narrow proposed scope of the topic of non-legally binding international agreements, the most appropriate outcome of the work might be a report, rather than draft conclusions or guidelines.

101. His delegation welcomed the appointment of a new Special Rapporteur for the topic "Immunity of State officials from foreign criminal jurisdiction" and the Commission's intention to complete the draft articles on immunity of State officials from foreign criminal jurisdiction on second reading. In that regard, his delegation wished to highlight the substantive comments that it had made on the draft articles adopted by the Commission on first reading (see A/77/10), reproduced in the complete version of his statement, which would be published in the Journal of the United Nations.

102. **Ms. Stavridi** (Greece) said that the current study of the topic "General principles of law" was a useful addition to the Commission's previous work on the sources of international law. Her delegation welcomed the adoption on first reading of the draft conclusions on general principles of law and the commentaries thereto.

103. With regard to draft conclusion 3 (Categories of general principles of law), Greece supported the wording "that may be formed" in the phrase "general principles of law … that may be formed within the international legal system", as it reflected the debate as to whether or not that category of general principles of law existed. In the interest of legal certainty and consistency, the Commission should elaborate on the affirmations in paragraph (2) of the commentary to draft conclusion 7 (Identification of general principles of law formed within the international legal system) that the international legal system, like any other legal system, must be able to generate general principles of law that were specific to it and that Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice did not exclude the existence of such principles.

104. Regarding draft conclusion 6 (Determination of transposition to the international legal system), her delegation noted that almost all of the examples provided in the commentary concerned principles that had not been considered compatible with the international legal system. It would be useful for the Commission to include examples of principles that had been considered compatible.

105. Greece noted the careful approach taken by the Commission with respect to paragraph 2 of draft conclusion 8 (Decisions of courts and tribunals) concerning the use of decisions of national courts as a subsidiary means for the determination of general principles of law. However, it must be borne in mind that the value of such decisions could vary. Moreover, further clarification was needed on the role of such decisions in the identification of general principles that might be formed within the international legal system.

106. Concerning draft conclusion 9, Greece advocated a cautious approach with regard to the use of teachings as a subsidiary means for determining general principles of law, in particular since the Commission was currently also working on the topic "Subsidiary means for the determination of rules of international law". Lastly, her delegation welcomed draft conclusion 10 (Functions of general principles of law), which covered both the essential and the specific functions of general principles of law.

107. Turning to the topic of sea-level rise in relation to international law, she said that her delegation welcomed the emphasis on legal stability in the additional paper (A/CN.4/761 and A/CN.4/761/Add.1) to the first issues paper prepared by the Co-Chairs of the Study Group on sea-level rise in relation to international law. Predictability, stability and certainty, which were inherent in the United Nations Convention on the Law of the Sea and guided its application, required the preservation of baselines and of the outer limits of maritime zones, and of the entitlements deriving therefrom. Moreover, the Convention did not impose an obligation on States to review or recalculate baselines or outer limits of maritime zones that had been established in accordance with its provisions and deposited with the Secretary-General. Baselines and outer limits of maritime zones were therefore not affected by climate change-related sea-level rise unless a coastal State chose to review and update them. The answers to the questions that had been raised on the topic were to be found within the Convention, which set out the legal framework within which all activities in the oceans and seas must be carried out. Thus, considerations *de lege ferenda* or pertaining to the formation of customary law were not relevant.

108. Maritime boundary agreements were subject to the rule excluding boundary agreements from fundamental change of circumstances; as a consequence, sea-level rise did not affect maritime boundaries. The importance of safeguarding the stability of maritime boundaries had been confirmed in State practice and international jurisprudence. Concepts such as equity and the principle that "the land dominates the sea" must be examined in the light of the principle of stability of boundaries and the need to preserve the baselines and outer limits of

maritime zones. A cautious approach must be taken when determining the relevance of principles, notions and concepts from other areas of law to the particular context of sea-level rise. Moreover, sources of law other than the Convention were of no relevance to the topic.

109. Such sensitive questions should be addressed with caution within the Commission, as they touched upon the carefully balanced legal regime for activities at sea set forth in the Convention, whose integrity should always be maintained.

110. **Mr. Solà Pardell** (Spain), referring to the topic "General principles of law", said that his delegation welcomed the adoption on first reading of the draft conclusions on general principles of law. The text represented a significant contribution to codification and progressive development in respect of the sources of international law referred to in Article 38, paragraph 1, of the Statute of the International Court of Justice.

111. His delegation was of the view that there were general principles of law intrinsic to the international legal system, in addition to those derived from national legal systems. The principles of consent to jurisdiction, *uti possidetis*, elementary considerations of humanity, prohibition on the use of territory for purposes contrary to international law and respect for human dignity, which the Commission had referred to in its report (A/78/10), and others, such as the right of States to protect their nationals, had been identified by the International Court of Justice as having been formed within the international legal system.

112. His delegation supported draft conclusion 10 (Functions of general principles of law). Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice reflected the understanding of general principles of law as a tool to help judges to rule in complicated cases and avoid situations of *non liquet*. Spain also welcomed the inclusion of draft conclusion 11, concerning the relationship between general principles of law and other sources of international law.

113. As for the topic of sea-level rise in relation to international law, Spain welcomed the work of the Study Group on sea-level rise in relation to international law, including its extensive efforts to compile the bibliography related to the law of the sea aspects of sea-level rise contained in the addendum (A/CN.4/761/Add.1) to the additional paper to the first issues paper prepared by the Co-Chairs of the Study Group. However, it should be noted that there were few references to Spanish-language texts in the bibliography.

114. Sea-level rise would have significant implications in terms of international law, human rights, development and peace and security. It was thus an area where there was a clear need for the nexus between the three pillars of the United Nations to be strengthened. The Study Group's work would undoubtedly promote interaction and integration between the law of the sea, international environmental law and international human rights law. In that regard, the Study Group should draw on human rights doctrine to examine the threats to human rights posed by environmental degradation and sea-level rise. International law provided powerful tools for ending the current ecological crisis. Moreover, a comprehensive interpretation of all instruments would make it possible to "green" the Charter of the United Nations and uphold the human right to a clean, healthy and sustainable environment provided for in General Assembly resolution 76/300.

115. All States would be affected by sea-level rise, and some were already experiencing its consequences. States with low-lying coastal areas and small island developing States, in particular, were facing a serious immediate threat. It was crucial to determine how situations of partial or total de-territorialization or depopulation should be handled under international law; how to ensure the continuity of statehood and legal personality in the context of sea-level rise; how the conversion of islands into rocks and of rocks into shallows should be understood from a legal point of view in relation to the rights of States over maritime spaces; and how to ensure that islands and territories threatened by climate change remained habitable and that their populations were able to enjoy their right to remain there. In its upcoming work on the subtopics of statehood and the protection of persons affected by sea-level rise, which were the most pressing issues to be addressed, the Study Group should analyse the relationship between sea-level rise and human rights and international security. Commenting on a number of points mentioned in the Commission's report, he said that his delegation agreed with the Commission that it was important to prioritize the issues to be addressed and to further explore the issue of submerged territories. The final report of the Study Group should contain practical guidance for affected States, as well as guidance on the protection of the most vulnerable populations and communities. Spain agreed with the Study Group that caution should be exercised when interpreting the silence of some affected States and when using new concepts that had not yet been defined in international law.

116. With regard to the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and

maritime zones, his delegation supported the general view that the United Nations Convention on the Law of the Sea should be interpreted in such a way as to address sea-level rise effectively and provide practical guidance to affected States. In that connection, the Study Group should pay significant regard to the concept of the legal stability of existing boundaries and to the advisory opinions on the obligations of States in relation to climate change to be issued by the International Tribunal for the Law of the Sea, the International Court of Justice and the Inter-American Court of Human Rights. His delegation hoped that the International Court of Justice would favour a progressive interpretation of the applicable international law that would encourage States to mount an ambitious response to the challenge of climate change. Such an approach could facilitate the systemic integration of different instruments and reconcile the obligations arising from the Paris Agreement with those under international human rights instruments. Lastly, there was a need for States to take a coordinated and inclusive approach to addressing the various dimensions of the ecological crisis through the rules of the international legal regime.

The meeting rose at 1 p.m.