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Chair: Ms. Lungu (Vice-Chair) . . . . . (Romania)

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23-20403 (E)

In the absence of Mr. Chindawongse (Thailand), Ms. Lungu (Romania), Vice-Chair, took the Chair.

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

Agenda item 79: Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions (*continued*) (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. **Ms. Cupika-Mavrina** (Latvia), speaking on the topic "Sea-level rise in relation to international law", said that sea-level rise was a cross-regional issue on which the international community needed to take immediate collective action to find the most appropriate solution for all, but most importantly, for the most affected countries. Her delegation agreed with the conclusion of members of the Study Group on sea-level rise in relation to international law, as reflected in the Commission's report (A/78/10), that the issue would have a large impact on people in a broad range of areas and that it was of direct relevance to the question of peace and security. It was already apparent that climate change would foster competition for vital resources and fuel tension in some regions. Sea-level rise would have an impact on coastal communities' water security, agricultural production, infrastructure and social development services. With respect to the issue of *sui generis* regimes, it was vital to take into account the voice of low-lying and small island developing States, which faced the greatest risks from sea-level rise, in order to find the best solution in the event of loss of territory, which would be preceded by a loss of habitat and livelihoods. Sea-level rise was a problem fully caused by humans, and the countries that had most contributed to the issue had not yet felt the consequences of their actions.

3. International courts and tribunals played an important role in clarifying the applicable rules that guided the conduct of States and other actors in dealing with the causes and implications of the climate crisis. In that regard, her delegation welcomed the adoption, at the initiative of Vanuatu, of General Assembly resolution 77/276, in which the Assembly decided to request the International Court of Justice to render an advisory opinion on the obligations of States in respect of climate change. It also welcomed the request for an advisory opinion on climate change and international law submitted to the International Tribunal for the Law of the Sea by the Commission of Small Island States on Climate Change and International Law. On 15 September 2023, Latvia, in line with its status as a coastal State and the value it gave to the international rules-based order, had presented its oral observations before the Tribunal in respect of the latter request. Latvia would also submit a written statement to the International Court of Justice concerning the advisory opinion requested by the Assembly.

4. **Mr. Herrera** (Argentina), speaking on the topic "General principles of law", said that his delegation welcomed the draft conclusions on general principles of law adopted by the Commission on first reading and considered that the aim of having the draft conclusions clarify the scope of general principles of law, the method for their identification, and their functions and relationship with other sources of international law was an important one. His delegation agreed with the Commission's view, expressed in its commentary to draft conclusion 1 (Scope), that the general principles of law listed in Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice, analysed in the light of the practice of States, the jurisprudence of courts and tribunals, and teachings, were a source of international law. It also agreed with the assertion in draft conclusion 2 (Recognition) that, for a general principle of law to exist, it must be recognized by the community of nations, and supported the use of the term "community of nations", drawn from article 15, paragraph 2, of the International Covenant on Civil and Political Rights, as a substitute for the anachronistic term "civilized nations" found in Article 38, paragraph 1 (*c*), of the Statute, as was explained in the commentary to draft conclusion 2.

5. In draft conclusion 3 (Categories of general principles of law), the Commission indicated that, in addition to general principles of law derived from national legal systems, there were also those that might be formed within the international legal system. That second category was a sensitive issue and must be approached with caution. In its commentary to draft conclusion 3, the Commission stated that the phrasing "may be formed" was used for the second category to introduce a degree of flexibility to the provision, acknowledging that there was a debate as to whether the second category of general principles of law existed. In its commentary to draft conclusion 7 (Identification of general principles of law formed within the international legal system), the Commission noted that several of its members had raised the concern that no sufficient State practice, jurisprudence or teachings were available to fully support the existence of the second category, making it difficult to determine in a clear manner the methodology for the identification of those principles. In his delegation's view, such methodology needed to be

further clarified and developed. For example, in draft conclusion 7, paragraph 2, the Commission had indicated that paragraph 1 of the draft conclusion, which established the criteria for determining the existence of general principles of law formed within the international legal system, was without prejudice to the question of the possible existence of other such principles, without providing any further detail.

6. His delegation approved of draft conclusions 4, 5 and 6, which referred to the methodology for determining the existence of general principles of law derived from national legal systems, and welcomed in particular the requirement that the comparative analysis of national legal systems should be wide and representative, including different regions of the world. It also supported draft conclusion 8, which 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, and draft conclusion 9, which provided that teachings of the most highly qualified publicists of the various nations might also serve as a subsidiary means for the determination of general principles of law.

7. Turning to the topic "Sea-level rise in relation to international law", he said that his delegation believed the Commission was the competent body to assess the legal aspects of the issue. The topic was highly relevant, as sea-level rise was having a major impact on coastal regions, particularly in developing countries, including small island developing States. The United Nations Convention on the Law of the Sea was the appropriate legal framework for the topic, as it was the core instrument regulating all activities in the oceans and seas. In that regard, the starting point for the measurement of maritime spaces subject to national jurisdiction was the baseline, where the normal baseline was the low-water line along the coast. In that regard, his delegation agreed with other Member States that the Convention could be interpreted in such a way as to effectively address sea-level rise, while at the same time noting that the Commission should proceed with caution with respect to preparing an interpretative declaration on the Convention that could serve as a basis for future negotiations between States parties, as had been proposed by several members of the Study Group on sea-level rise in relation to international law.

8. With respect to the effects of sea-level rise on the boundaries of maritime spaces, if the baselines and the outer limits of maritime spaces of a coastal or archipelagic State had been duly determined in accordance with the Convention, which also reflected customary international law, there should be no requirement to readjust those baselines and outer limits should sea-level changes affect the geographical reality of the coastline. His delegation agreed with the observation of the Co-Chairs of the Study Group that the principle of fundamental change of circumstances (*rebus sic stantibus*) within the meaning of the Vienna Convention on the Law of Treaties was not applicable to treaties establishing boundaries.

9. His delegation supported the calls by some members of the Study Group to exercise caution in applying the principle of *uti possidetis juris* in the context of sea-level rise, as that principle was exclusively applied in the context of succession of States. In that regard, it was worth noting the Co-Chair's observation that the intention of addressing the principle had not been to conclude that *uti possidetis juris* should apply to maritime delimitations within the context of sea-level rise, but rather to emphasize the importance accorded to ensuring the continuity of pre-existing boundaries in the interests of legal stability and the prevention of conflict.

10. Referring to the topic "Other decisions and conclusions of the Commission", he said that his delegation had taken note of the Commission's decision to include the topic "Non-legally binding international agreements" in its programme of work and welcomed the appointment of a Special Rapporteur for the topic. His delegation hoped that the Commission would clearly define its objective and shed light on the questions the topic raised. In that regard, the Commission should limit its analysis to non-binding international instruments signed by subjects of international law, meaning States and international organizations. It agreed with other delegations that it would be useful to change the title of the topic to "Non-legally binding international instruments", limiting the use of the term "agreements" to legally binding instruments in order to avoid terminological confusion.

11. **Mr. Nagano** (Japan), speaking on the topic "Other decisions and conclusions of the Commission", said that, in view of the importance Japan gave to strengthening the rule of law among nations, his delegation welcomed the Commission's plans for commemorating its seventy-fifth anniversary in 2024, which would offer an opportunity for enhanced dialogue between the Commission and Member States. His delegation had also taken note of the inclusion of the topic "Non-legally binding international agreements" in the Commission's programme of work and looked forward to discussions on the topic.

12. Turning 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 the commentaries thereto. As stated in draft conclusion 2, the community of nations must recognize a general principle of law in order for it to exist. In that regard, his delegation agreed with the Commission’s explanation, in the commentary to draft conclusion 6, that the transposition to the international legal system of a principle common to the various legal systems of the world did not occur automatically. His delegation took note of the divergence of views, both among members of the Commission and among Member States, as to the existence of general principles of law formed within the international legal system, and the concerns raised regarding the methodology for the identification of such principles. Furthermore, the Commission should provide further clarification regarding the distinction between general principles of law and customary international law in the commentaries to the draft conclusions.

13. The topic “Sea-level rise in relation to international law” was a pressing issue for the international community and had implications for peace and security around the world, given the imminent threats that sea-level rise posed to many countries, including island States. Legal stability and predictability based on international law were the necessary foundations for States to tackle the challenges posed by sea-level rise. For that reason, the primacy of the United Nations Convention on the Law of the Sea, which set out the legal framework for all activities in the oceans and seas, must be maintained with the goal of preserving and developing the maritime order on the basis of international law. His delegation welcomed the progress made by the Commission in discussing the issue of legal stability in relation to sea-level rise. Taking into account the Commission’s work on the topic and State practice, such as the adoption of the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise by the leaders of the Pacific Islands Forum, Japan had officially taken the position that it was permissible to preserve existing baselines and maritime zones established in accordance with the Convention, notwithstanding the regression of coastlines caused by climate change.

14. **Ms. Lee** Young Ju (Republic of Korea), speaking on the topic “General principles of law”, said that her delegation welcomed the Commission’s adoption on first reading of the draft conclusions on general principles of law and the commentaries thereto. It hoped that the Commission, by incorporating into the draft conclusions the comments and observations made by Member States, would bring its work on the project to a successful conclusion. The Commission was to be commended for its efforts to ensure that the draft conclusions reflected contemporary international law by updating anachronistic expressions, including the term “civilized nations”, which it had replaced with “community of nations”. Her delegation noted that there were differing views among members of the Commission, scholars and Governments concerning the additional category of general principles of law formed within the international legal system provided for in subparagraph (b) of draft conclusion 3 (Categories of general principles of law) and in draft conclusion 7 (Identification of general principles of law formed within the international legal system). In that regard, her delegation requested the Commission, in order to provide additional support for the existence of that category, to address in more detail the concern that its introduction might blur the distinction between customary international law and general principles of law. In addition, the phrase “intrinsic to the international legal system” used in draft conclusion 7, paragraph 1, was unclear. It was questionable whether the illustrations provided in the commentary to that paragraph, in particular the principle of *uti possidetis*, were appropriate examples of general principles of law intrinsic to the international legal system.

15. With regard to the topic “Sea-level rise in relation to international law”, her delegation appreciated the submission of the additional paper (A/CN.4/761) to the first issues paper prepared by the Co-Chairs of the Study Group on sea-level rise in relation to international law, as well as the issuance of a selected bibliography (A/CN.4/761/Add.1). The requests for opinions on matters related to State obligations in respect of climate change that were pending before the International Court of Justice, the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights were certain to heighten the significance of the Commission’s work on the topic. Her delegation hoped that such work would prove to be useful in articulating normative answers to address that crucial issue.

16. While her delegation had previously mentioned the need to approach the topic in terms of *lex ferenda* as well as *lex lata*, it was also important to discuss the topic on the basis of widespread State practice in order to devise more coherent and effective measures for addressing sea-level rise. Given the gradual progress of sea-level rise, the Commission might need to structure its discussion more systematically, based on the different phases of that process. In addition, as sea-level rise posed substantially divergent challenges to different

States, the Commission might wish to take a more flexible approach that considered States' differing circumstances. In May 2023, acknowledging the special circumstances faced by Pacific islands and their related concerns, her Government had expressed its support for the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, in which the leaders of the Pacific Islands Forum had proclaimed that maritime zones established in accordance with the United Nations Convention on the Law of the Sea and the rights and entitlements that flowed from them would continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.

17. Referring to the topic "Other decisions and conclusions of the Commission", she said that her delegation took note of the inclusion of the topic "Non-legally binding international agreements" in the Commission's programme of work and welcomed the appointment of the Special Rapporteur for the topic. It also welcomed the appointment of a new Special Rapporteur for the topic "Immunity of State officials from foreign criminal jurisdiction", which would help advance discussions.

18. **Ms. Dramova** (Bulgaria), speaking on the topic "Sea-level rise in relation to international law", said that, given that the United Nations Convention on the Law of the Sea was the foundation of ocean governance and the most significant achievement in the evolution of the law of the sea, legal conclusions on the topic should be formulated only on the basis of and with full respect for the integrity and relevant principles and provisions of the Convention. The Convention did not contain a legal obligation for States to regularly review and update their baselines and the delimitation of their maritime boundaries that had been established in accordance with the applicable rules of the Convention. The Commission's work on the topic should take into account the principle of legal stability. Her delegation shared the view of the Co-Chairs of the Study Group, as expressed in the preliminary observations made in their first issues paper (A/CN.4/740), that sea-level rise did not constitute a fundamental change of circumstances under article 62 of the Vienna Convention on the Law of Treaties. In that regard, the Commission, in its outcome on the topic, should underline the importance of preserving the boundaries and rights of coastal states over their maritime spaces established in line with the principles and relevant provisions of the United Nations Convention on the Law of the Sea. With respect to the question of what form the results of the work of the Commission should take, her delegation supported the production of a set of conclusions that would provide practical solutions to the legal problems caused by sea-level rise.

19. **Mr. Moriko** (Côte d'Ivoire), speaking on the topic, "General principles of law", said that his delegation welcomed the draft conclusions on general principles of law, and the commentaries thereto, adopted by the Commission on first reading. The Commission's work clarified the nature, scope and functions of general principles of law, and the criteria and methodology for their identification, and also reaffirmed that general principles of law constituted one of the sources of international law mentioned in Article 38 of the Statute of the International Court of Justice. His delegation looked forward to the Commission's continued consideration of the topic.

20. The topic "Sea-level rise in relation to international law" was of particular importance to his delegation, as Côte d'Ivoire was one of the coastal States most affected by sea-level rise. Annual flooding caused major loss of life, led to population displacement and threatened critical infrastructure. His Government had implemented adaptation and mitigation measures in response to sea-level rise, including relocating coastal communities to more secure areas and carrying out water drainage and sanitation projects, with the support of the World Bank. Recognizing the link between global warming and sea-level rise, Côte d'Ivoire was committed to drastically reducing its carbon dioxide emissions and introducing renewable energy sources into its energy mix. His delegation called on bilateral and multilateral partners to honour their financial commitments under the Paris Agreement and facilitate the entry into force of the loss and damage fund established at the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. It also encouraged its partners to continue to support the implementation of the national sustainability programme, known as the Abidjan Initiative, that his Government had established following the fifteenth session of the Conference of the Parties to the Convention to Combat Desertification, and urged the international community to support the implementation of the recommendations made by African leaders at the recent Africa Climate Summit, particularly those related to increasing renewable generation capacity in Africa.

21. His delegation welcomed the plans for the Study Group on sea-level rise in relation to international law to revert to the subtopics of statehood and the protection of persons affected by sea-level rise. His delegation agreed with the comments made in favour of the immutability and intangibility of maritime boundaries, as reflected in the Commission's report (A/78/10),

subject to further study of the case of submerged territories. The legal stability of affected States was at stake. His delegation believed that the proposal to develop a draft framework convention on issues related to sea-level rise, following the example of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, was worth considering. It looked forward to reviewing the conclusions of the Study Group's final report, to be issued in 2025.

22. Referring to the topic "Other decisions and conclusions of the Commission", he said that his delegation welcomed the inclusion of the topic "Non-legally binding international agreements" in the Commission's programme of work. The legal nature of such agreements, which were referred to as "soft law", deserved further clarification, as was also the case with general principles of law.

23. **Mr. Bouchedoub** (Algeria) said that his delegation looked forward to the commemoration of the seventy-fifth anniversary of the Commission, which would be held in Geneva in 2024. With regard to the topic "General principles of law", his delegation welcomed the Special Rapporteur's intention to compile a bibliography, something that would increase the credibility and transparency of the Commission's work. With regard to the draft conclusions on general principles of law adopted by the Commission on first reading, it welcomed in principle the use of the term "community of nations", rather than "civilized nations", in draft conclusion 2 (Recognition). However, the term "community of nations" was itself imperfect because, as stated in paragraph (5) of the commentary to draft conclusion 2, it implied that, in certain circumstances, international organizations might also contribute to the formation of general principles of law. Such a provision would thus effectively modify the scope and content of Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice. The contradiction between paragraphs (4) and (5) of the commentary to draft conclusion 2 could be resolved by replacing the term "community of nations" with "community of States".

24. His delegation welcomed subparagraph (a) of draft conclusion 3 (Categories of general principles of law), draft conclusion 4 (Identification of general principles of law derived from national legal systems), draft conclusion 5 (Determination of the existence of a principle common to the various legal systems of the world) and draft conclusion 6 (Determination of transposition to the international legal system), all of which addressed the transposition of general principles of law derived from national legal systems to the international legal system. It encouraged the Commission to continue with its wide comparative analysis of national legal sources, including legislation and the decisions of national courts, taking into account linguistic diversity and the characteristics of each national system. It was necessary to cover the principal legal systems of the world, in order to ensure that a principle had effectively been generally recognized by the international community.

25. His delegation had reservations regarding the category of general principles of law formed within the international legal system. It was clear from the *travaux préparatoires* of the Statute of the International Court of Justice that only general principles of law developed in domestic law were included in Article 38, paragraph 1 (*c*), of the Statute. The general principles described under the category of principles formed within the international legal system were in fact rules of conventional law. It would be preferable to avoid considering such principles in order to prevent confusion between general principles of law, as envisaged in Article 38, paragraph 1 (*c*), and other sources of international law.

26. With regard to draft conclusion 11 (Relationship between general principles of law and treaties and customary international law), his delegation believed that general principles of law played a subsidiary or supplementary role in the interpretation of other rules of international law, and that they formed one of the three main sources of international law. They were an autonomous source of international law, giving rise to rights and obligations, as the list of sources in the Statute was not hierarchical.

27. As to the topic "Sea-level rise in relation to international law", it was important for the solutions referred to 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 to be consistent with the United Nations Convention on the Law of the Sea, with a view to providing legal stability and preserving existing boundaries, with a focus on baselines and maritime zones. His delegation therefore encouraged the Study Group to continue endeavouring to fill legal gaps and develop international law without affecting the rights arising from the establishment of maritime boundaries under the Convention, which amounted to a "constitution of the seas". The principles referred to in the additional paper, including *uti possidetis juris* and self-determination, were closely linked with sovereignty over natural resources and territorial integrity. Given that sea-level rise was ultimately a result of global

warming and the melting of polar ice caps, the Study Group should consider the issue from the perspective of environmental law, including the "polluter pays" principle and the principle of common but differentiated responsibilities. It would thus be possible to reach practical conclusions that would provide comprehensive legal solutions to States affected by sea-level rise, particularly in the developing world.

28. **Ms. Bailey** (Jamaica), referring to the topic "General principles of law", said that draft conclusion 1 (Scope) of the draft conclusions on general principles of law adopted by the Commission on first reading captured the essence of Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice, establishing that general principles of law were one of the sources of international law, which should be the starting point for discussion of the topic. Her delegation noted that paragraph (3) of the Commission's commentary to draft conclusion 1 stated that the draft conclusions were aimed at clarifying the scope of general principles of law, the method for their identification, and their functions and relationship with other sources of international law. With respect to draft conclusion 2 (Recognition), her delegation agreed in principle that, in accordance with Article 38, paragraph 1 (*c*), of the Statute, recognition was a necessary criterion for the establishment of a general principle of law. It also supported the decision to use the term "community of nations" in draft conclusion 2 rather than the term "civilized nations" used in the Statute, in order to reflect modern realities. However, the Commission should clarify its statement, in paragraph (5) of the commentary to draft conclusion 2, indicating that the use of the term "community of nations" did not preclude that, in certain circumstances, international organizations might also contribute to the formation of general principles of law. At the very least, it should identify examples of the circumstances mentioned.

29. Her delegation had taken particular note of draft conclusion 7 (Identification of general principles of law formed within the international legal system), in paragraph 1 of which the Commission had indicated that it was necessary to ascertain that the community of nations had recognized the principle as intrinsic to the international legal system. In its commentary to that draft conclusion, the Commission had specified that the international legal system, like domestic legal systems, 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 or in its drafting history limited general principles of law to those derived from national legal systems. Regarding the methodology for identifying general principles of law formed within the international legal system, the Commission had posited, in paragraph (3) of its commentary to draft conclusion 7, that an analysis of existing rules in the international legal system was required, and that such analysis must take into account all available evidence of the recognition of the principle in question by the community of nations, such as international instruments reflecting the principle, resolutions adopted by international organizations or at intergovernmental conferences, and statements made by States. Given that general principles of law had not heretofore been considered as intrinsic to the international legal system in the manner proposed by the Commission, her delegation wished to further examine draft conclusion 7 and the commentary thereto before making any final pronouncement thereon. In that regard, it asked the Commission to elucidate in its commentary what impact, if any, the draft conclusion might have on the future interpretation of Article 38, paragraph 1 (*c*), of the Statute, and how the methodology for identification of such general principles of law would be applied so as not to create any overlaps with customary international law.

30. Turning to the topic "Sea-level rise in relation to international law", she said that, as noted by other delegations, small island developing States suffered the most from sea-level rise. The negative effects of rising sea levels had steadily increased over the years in Jamaica. In particular, there was evidence that the country was at risk of losing parts of its territory, its cultural and heritage sites, and its population through displacement. According to the Climate Change Policy Framework for Jamaica of March 2023, agriculture, water, coastal and marine resources, human settlements and infrastructure were among the sectors most vulnerable to sea-level rise. It was also predicted that beaches, including coastal lands, would be eroded as a result of sea-level rise and that fish production would be reduced owing to increases in sea surface temperatures and a rise in the sea level.

31. While the drafters of the United Nations Convention on the Law of the Sea could not have foreseen the challenges now faced in respect of sea-level rise resulting from climate change, they had laid down principles by which States might delimit their boundaries. Her delegation was of the view that those boundaries, once established, must be preserved, acknowledged and respected, especially in the context of sea-level rise. In that regard, it wished to underscore that, as indicated by the representative of Samoa on behalf of the Alliance of Small Island States at the previous meeting, States did not have a legal obligation under the Convention to keep the baselines and outer

limits of their maritime zones under review or to update charts or lists of geographical coordinates after depositing them with the Secretary-General in accordance with the provisions of the Convention. Like many other States, Jamaica had adopted laws to preserve its baselines and maritime zones. Its Maritime Areas Act provided that Jamaica was an archipelagic State, established its sovereignty over its archipelagic waters and prescribed, inter alia, its internal waters, territorial waters and exclusive economic zones. The preservation of States' maritime rights was deeply connected to the preservation of their statehood. In that regard, the Convention on Rights and Duties of States was generally regarded as outlining the criteria for statehood; however, it did not lay down rules for the continuation thereof. Her delegation supported the continuity of statehood, noting that the corpus of international law indicated that, once established, it was difficult for a State to lose its statehood.

32. Specific aspects of the criteria for statehood set forth in the Convention on Rights and Duties of States could potentially be affected by sea-level rise, notably, a State's possession of a defined territory and a permanent population. In the case of the latter, there would be implications for the treatment of a displaced population and the need for such persons to maintain connections with their homeland while living abroad. Every effort should be made to ensure that they were not rendered stateless and appropriate regulations should be put in place to ensure that their human rights were respected. Her delegation looked forward to the Commission's work on the progressive development of international law on that matter, noting that there was a growing body of literature concerning the effects of climate change, such as sea-level rise, on the enjoyment of human rights, including the right to security of the person and the right to life.

33. There was a need for international cooperation to adapt to changes and mitigate the impact of sea-level rise where possible, and global warming levels must be controlled as a means of curbing the steady rise in the sea levels. Discussions of the topic should also be shaped by environmental principles, as elaborated in the Rio Declaration on Environment and Development, such as the principle of common but differentiated responsibilities and the need to give priority to the situation of developing and least developed States, particularly the most vulnerable.

34. **Ms. Flores Soto** (El Salvador) said that her delegation was pleased that two women had co-chaired the seventy-fourth session of the Commission. It encouraged States to ensure truly equitable representation in terms of gender, not just geographical region, within the Commission.

35. Speaking on the topic of general principles of law and referring to the draft conclusions on general principles of law adopted on first reading, she said that her delegation welcomed the use of the phrase "community of nations" rather than "civilized nations" in draft conclusion 2 (Recognition), as the latter did not reflect the current realities of international society. In that connection, El Salvador supported the suggestion by the President of the International Court of Justice that the Court's Statute be amended to remove the phrase "civilized nations".

36. Her delegation reiterated its support for the view that general principles of law could be derived not only from national legal systems but also from the international legal system. El Salvador also recognized principles emanating from regional organizations such as the Central American Integration System.

37. Her delegation supported the affirmation in paragraph (5) of the commentary to draft conclusion 5 (Determination of the existence of a principle common to the various legal systems of the world) that the terms "national laws" and "decisions of national courts", in paragraph 3 of the draft conclusion, should be understood in a broad way, covering the various materials available in different legal systems, including legislation, decrees, regulations and the decisions of national courts and tribunals from different levels and jurisdictions. On the matter of transposition, her delegation considered that analysis of a principle's compatibility with the international legal system was key to determining whether it could be transposed to it.

38. With regard to draft conclusion 12 (*Lex specialis* principle) proposed by the Special Rapporteur in his third report (A/CN.4/753), there was merit in the notion that the *lex specialis* principle was applicable as a means of resolution of conflicts of laws; however, other principles might also be applicable, and they could be an interesting subject of study.

39. El Salvador reiterated that Article 38 of the Statute of the International Court of Justice did not establish any hierarchy among the sources of international law. Those sources should instead maintain a systematic interrelationship among themselves, which would then allow them to generate various legal effects, including declaratory, crystallizing and generating effects.

40. On the topic "Sea-level rise in relation to international law", her delegation reiterated that sea-level rise should be recognized by the Commission as a scientifically proven fact, the implications of which

were not limited to the law of the sea but extended to a wide range of other disciplines and sources of international law that converged in a multidimensional analysis of the phenomenon and should be addressed by the Commission. In that regard, her delegation was concerned about the reference in paragraph 142 of the Commission's report (A/78/10) to there being "no obvious evidence of *opinio juris* concerning the existence of a custom regarding the fixing of baselines". The Study Group on sea-level rise in relation to international law should continue to examine regimes based on historic titles and rules of customary international law applicable to geological formations not described in the United Nations Convention on the Law of the Sea. The case of historic bays whose indentations did not fall within the definition provided in the Convention was an example of why the Commission's approach to sea-level rise should take into account not only the Convention but also other relevant legal instruments or customary rules.

41. Concerning "Other decisions and conclusions of the Commission", her delegation welcomed the constitution of the Planning Group to consider the programme, procedures and working methods of the Commission. The Committee should take a similar approach; rather than limiting its deliberations to substantive debates on the Commission's work, it should discuss ways to enhance its planning and working methods so as to improve its treatment of the Commission's outputs. Lastly, her delegation welcomed the Commission's recommendation that the first part of its seventy-seventh session be held at United Nations Headquarters in New York.

42. **Mr. Tōnē** (Tonga) said that his delegation welcomed the progress made by the Commission on the topic of sea-level rise in relation to international law, including the issuance 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. Legal certainty and stability with respect to baselines and maritime zones were needed in order to address the threats to livelihoods, security and well-being posed by accelerating sea-level rise. In that regard, Tonga reiterated its commitment to securing the maritime limits of the Blue Pacific continent, in line with the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise adopted by the leaders of the Pacific Islands Forum in 2021, with a view to promoting the stability, security, certainty and predictability of maritime entitlements.

43. His delegation agreed with members of the Study Group that sea-level rise was of direct relevance to the question of peace and security. Tensions were already deepening as a result of losses of territory, scarcity of resources and increased displacement. Against that backdrop, it was crucially important to interpret and apply the United Nations Convention on the Law of the Sea in a way that respected the rights and sovereignty of vulnerable small island States. In that regard, the baselines and the outer limits of maritime zones measured therefrom, together with the associated entitlements, must be preserved. Tonga was committed to ensuring that the maritime zones of Pacific States were delineated in accordance with the Convention, and that those zones were not challenged or reduced as a result of climate change-induced sea-level rise. His delegation agreed with the preliminary observation of the Co-Chairs that there was no obligation under the Convention for States to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General. The work of the Study Group would strengthen the framework of the Convention by addressing issues that had not been contemplated at the time of its negotiation. His delegation remained committed to collective efforts to progressively develop the law of the sea so as to address the stark reality of rising sea levels.

44. **Mr. Pittakis** (Cyprus), speaking on the topic "Sea-level rise in relation to international law", said that, as an island-State itself, Cyprus was mindful of the severity of the expected consequences of climate change and climate-induced sea-level rise and welcomed the Commission's efforts to clarify the legal issues related to the potential effects of rising sea levels. Convinced that legal stability with regard to baselines and maritime zones was vital for the preservation of the rights of coastal States under international law, his delegation welcomed the observation of the Study Group on sea-level rise in relation to international law, reflected 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. Cyprus was of the view that the Convention did not forbid or exclude the possibility of preserving maritime zones by fixing or freezing baselines and that, accordingly, States could designate permanent baselines pursuant to the Convention, which would withstand any subsequent regression of the low-water line. That view was in conformity with the Convention and was aimed at safeguarding the legal entitlements of coastal States in the light of the ongoing, worrisome developments generated by climate change.

45. Moreover, it was the position of his delegation that baselines must be permanent and not ambulatory, in order to ensure greater predictability with regard to maritime boundaries. That position was in line with the Convention and international jurisprudence. Fixing baselines at a certain point in time by way of maritime delimitation agreements and the decisions of the International Court of Justice, the International Tribunal for the Law of the Sea and arbitral tribunals established pursuant to the United Nations Convention on the Law of the Sea and other bodies was also consistent with the 1969 Vienna Convention on the Law of Treaties.

46. In that respect, his delegation welcomed the observation of members of the Study Group that the principle of fundamental change of circumstances (*rebus sic stantibus*), enshrined in article 62, paragraph 1, of the Vienna Convention, was not applicable to maritime boundaries because the latter involved the same element of legal stability and permanence as land boundaries and were thus subject to the exclusion foreseen in article 62, paragraph 2 (*a*), of the Vienna Convention. Cyprus agreed with the view that the principles of legal stability and certainty of treaties would accordingly support an argument against the use of the principle of *rebus sic stantibus* to upset the maritime boundary treaties resulting from the rise in sea levels. His delegation reiterated its position that rising sea levels should have no legal effect on the status of a concluded maritime treaty.

47. Cyprus welcomed the observations in paragraph 158 of the Commission's report (A/78/10) regarding the United Nations Convention on the Law of the Sea. It maintained its position that the Study Group had no mandate to propose modifications to the Convention, including in relation to its customary nature. In particular, no changes should be made to the regime of islands established under the Convention. Any interpretation of applicable rules of international law should be made with full respect for the letter and spirit of the Convention.

48. **Mr. Hitti** (Lebanon) said that the Commission played a key role in strengthening the international legal framework, including in relation to preventing impunity for mass atrocities such as those being carried out every day against the Palestinian people.

49. His delegation welcomed the efforts that had been made to enhance cooperation between the Commission and the Sixth Committee, include the holding of virtual briefings in September 2023 to provide Committee members with information about the work of the Commission at its seventy-fourth session prior to their consideration of its report on the session. The presence of members of the Commission at the current session of the General Assembly had allowed for constructive and inclusive discussions with delegations. In the future, it would be useful for the Commission to provide an executive summary of its annual report and limit the number of topics on its programme of work.

50. Regarding "Other decisions and conclusions of the Commission", Lebanon noted with interest the various ideas put forward by the Commission to revitalize its working methods and enhance its relationship with the General Assembly and other bodies. It also noted the addition of the topic "Non-legally binding international agreements" to the Commission's programme of work and welcomed the appointment of a new Special Rapporteur for the topic "Immunity of State officials from foreign criminal jurisdiction".

51. Turning to the topic of general principles of law, he said that his delegation welcomed the adoption on first reading of the draft conclusions on general principles of law, which would provide useful guidance to States, international organizations, courts and tribunals, and others called upon to deal with general principles of law as a source of international law. With regard to draft conclusion 2 (Recognition), his delegation supported the use of the term "community of nations", rather than the obsolete term "civilized nations" found in the Statute of the International Court of Justice. Although some delegations had expressed a preference for the word "States", rather than "nations", it should be borne in mind that the term "community of nations" had been drawn from the widely ratified International Covenant on Civil and Political Rights.

52. With regard to subparagraph (b) of draft conclusion 3 (Categories of general principles of law) and draft conclusion 7 (Identification of general principles of law formed within the international legal system), his delegation would follow with interest the evolution of the debate concerning the divergence of views within the Commission, between States and in the doctrine as to the existence of general principles of law formed within the international legal system. In those discussions, care should be taken to avoid any confusion between general principles of law and customary international law.

53. Lebanon supported the two-step analysis for identifying general principles of law derived from national legal systems set out in draft conclusion 4. However, in the light of the questions raised by States, the Commission should examine the question of transposition in more detail.

54. His delegation noted with satisfaction the inclusive approach that had been taken in draft

conclusion 5 (Determination of the existence of a principle common to the various legal systems of the world), through references to the "various legal systems of the world" and to the need for the comparative analysis of national legal systems to be "wide and representative, including the different regions of the world". The phrase "principal legal systems of the world" in Article 9 of the Statute of the International Court of Justice was outdated.

55. Draft conclusion 11 (Relationship between general principles of law and treaties and customary international law) provided important clarifications, indicating that there was no hierarchy among general principles of law, treaties and customary international law and that rules in different sources of international law could exist in parallel.

56. Addressing the topic of sea-level rise in relation to international law, he said that while small island developing States faced the most imminent threat, all coastal regions would be affected, and the consequences would be felt by the international community as a whole. It was important to ensure legal stability, certainty and predictability, in particular with regard to maritime zones. In that regard, Lebanon agreed that legal stability was inherently linked to the preservation of maritime zones.

57. The Commission should develop concrete solutions to the practical problems resulting from sea-level rise. In its work, it should preserve the central role of the United Nations Convention on the Law of the Sea, as well as the integrity and stability provided by that instrument, while drawing on State practice as necessary. Lebanon noted with interest the suggestion that a meeting of States parties to the Convention might be considered with a view to interpreting the Convention. His delegation agreed that it would be useful for the Study Group on sea-level rise in relation to international law to have a clearer road map, which should specify, inter alia, the form and content of its final report and the outcomes to be delivered.

58. **Ms. Arumpac-Marte** (Philippines) said that her delegation commended the Co-Chairs of the Commission during its seventy-fourth session for their leadership as female jurists of recognized competence in international law who were forging a path for more women to participate in the Commission. The Philippines was grateful to the Commission's secretariat for its outstanding support and appreciated the detailed briefing that had been provided for Committee members ahead of their consideration of the report of the Commission (A/78/10).

59. Addressing the topic "General principles of law" and referring to the draft conclusions on general principles of law adopted by the Commission on first reading, she said that her delegation agreed with the statement in paragraph (2) of the commentary to draft conclusion 1 (Scope) that the legal nature of general principles of law as one of the sources of international law was confirmed by their inclusion in Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice, together with treaties and customary international law, as part of the "international law" to be applied by the Court to decide the disputes submitted to it.

60. With regard to draft conclusion 2 (Recognition), the Philippines supported the proposition, set out in paragraph (2) of the commentary thereto, that to determine whether a general principle of law existed at a given point in time, it was necessary to examine all the available evidence showing that its recognition had taken place. It welcomed the use of the term "community of nations", as a substitute for the term "civilized nations" found in the Statute of the International Court of Justice, as the former term was in line with the principle of sovereign equality and, as noted by the Commission in paragraph (3) of the commentary to the draft conclusion, all nations participated equally, without any kind of distinction, in the formation of general principles of law.

61. Her delegation was of the view that the two categories of general principles of law set forth in draft conclusion 3 were both contemplated in Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice. Her country's practice supported that position; its Constitution contained an incorporation clause stipulating that the generally accepted principles of international law were adopted as part of the law of the land.

62. The Philippines was continuing to examine draft conclusion 4 (Identification of general principles of law derived from national legal systems) and the related draft conclusions 5 (Determination of the existence of a principle common to the various legal systems of the world), 6 (Determination of transposition to the international legal system) and 7 (Identification of general principles of law formed within the international legal system). In particular, it was considering the implications of the two-step analysis for the identification of general principles of law derived from national legal systems.

63. In that connection, her delegation wished to share the views of Philippine jurist Merlin Magallona, who had noted that, when applied by the International Court

of Justice, under Article 38, paragraph 1 (*c*), of its Statute, general principles of law were assumed to have the status of international law; otherwise, they would not qualify to be applied by the Court in the performance of its judicial function. He had also stated that such an interpretation militated against the view that Article 38, paragraph (1) (*c*), referred to principles that were generally established and applied in national law, universally recognized in well-developed national legal systems or extensions of general principles of national law. He had further noted that, before the reorganization of the Permanent Court of International Justice into the International Court of Justice, one current of thought pursued in the settlement of international disputes had run along that orientation, but that even then there had seemed to be an assumption that it involved a process of transference of general principles of national law to the international regime through the legal reasoning employed by the individual international judge, which appeared to be a subjective process.

64. Mr. Magallona had stated that a significant change introduced by the Court's reorganization had been the addition of the words "in accordance with international law" to Article 38, paragraph 1, of its Statute, clearly indicating that the sources identified in subparagraphs (*a*), (*b*) and (*c*) had the status of international law. He had suggested that it would be useful to find out whether that amendment had led to a significant reorientation in the practice of international adjudication. He had also wondered whether general principles of law must have the status of norms of international law at the time of their application by the Court, or whether they could be part of national legal systems at the time of their application and then become transmuted into general principles of law by the method of the Court's reasoning. According to him, the important consideration was the method or process by which the Court, or any other international tribunal, could adapt principles of national law so as to make them elements of international law. In that connection, he had drawn attention to the separate opinion by Sir Arnold McNair to the advisory opinion of the International Court of Justice on the *International Status of South-West Africa*, in which the judge had stated that the way in which international law borrowed from general principles of law was not by means of importing private law institutions ready-made and fully equipped with a set of rules, and that it would be difficult to reconcile such a process with the application of the general principles of law. Mr. Magallona's arguments were set out in greater detail in her delegation's written statement.

65. The Philippines welcomed draft conclusion 8, on the role that decisions of international and national courts and tribunals played in the identification of general principles of law. It agreed with the Commission, as stated in paragraph (4) of the commentary to draft conclusion 8, that decisions of national courts could be relied upon to identify general principles of law in the context of the comparative analysis required to determine the existence of a principle common to the various legal systems of the world. With regard to draft conclusion 9 (Teachings), her delegation supported the Commission's view that "teachings" referred to both writings and teachings in non-written form, such as lectures in the United Nations Audiovisual Library of International Law. Lastly, concerning draft conclusion 11 (Relationship between general principles of law and treaties and customary international law), her delegation agreed that general principles of law were not in a hierarchical relationship with treaties and customary international law.

66. On the topic "Sea-level rise in relation to international law", she said that the Philippines, an archipelagic State highly vulnerable to sea-level rise and its effects, welcomed the reconstitution of the Study Group on sea-level rise in relation to international law and the exchanges of views of its members. In that regard, her delegation noted the observation by one of the Co-Chairs of the Study Group that Member States had underlined the need to interpret the United Nations Convention on the Law of the Sea in such a way as to effectively address sea-level rise in order to provide practical guidance to affected States. It also noted that there was a growing consensus among Member States that the Convention did not forbid or exclude the option of fixing baselines and that Member States had stressed the importance of preserving maritime zones, noting that the Convention did not prohibit the freezing of baselines. Her delegation was pleased to see that the Commission seemed to be taking into account the written comments submitted by Member States. The approach to sea-level rise must be based on legal stability, security, certainty and predictability in international law. In that regard, her delegation drew attention to the Co-Chair's observation that Member States had adopted a pragmatic approach, referring to legal stability as inherently linked to the preservation of maritime zones. Member States had also underlined the need to interpret the United Nations Convention on the Law of the Sea in such a way as to effectively address the concerns that had been raised.

67. The Convention was premised on the idea that the codification and progressive development of the law of the sea would contribute to the strengthening of peace, security, cooperation and relations among all nations in conformity with the principles of justice and equal rights

and would promote the economic and social advancement of all peoples of the world. Given that it had been carefully crafted to balance the interests of States, the possible use of subsequent agreements and practice as authentic means of interpreting it must be carefully considered. The Philippines was of the view that while the Convention had not been designed to address the consequences of climate change, its scope was broad enough to cover the connection between the climate and the oceans. While the Convention must not be undermined, it could and should be interpreted and applied in the light of changes in global circumstances, international law and international policy.

68. Her delegation would continue to consider how the international community could collectively address the problems encountered by States facing territorial loss owing to sea-level rise. The suggestion that submerged territories could have *sui generis* status might be worth considering, especially since sea-level rise was human-caused. Her delegation looked forward to the results of the Study Group's consideration of the question of self-determination during the next session of the Commission, especially since the Co-Chairs had recognized the relevance of the principle of self-determination to the three subtopics under consideration. Her delegation would follow closely the Study Group's deliberation concerning the applicability of the principle of fundamental change of circumstances (*rebus sic stantibus*) in the context of sea-level rise. It noted the divergence of views regarding the applicability of the principle that the land dominated the sea.

69. With regard to the principle of historic waters, title and rights, the Philippines noted with caution the view of one of the Co-Chairs of the Study Group that the principle was relevant to the topic of sea-level rise as it provided an example of the preservation of existing rights in maritime areas. It also noted that some members of the Study Group had stated that the principle was of an exceptional nature and had called for caution in examining its applicability in the context of sea-level rise. Given that the award of 12 July 2016 handed down by the arbitral tribunal constituted under annex VII to the United Nations Convention on the Law of the Sea in the South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China) had been discussed by the Study Group, her delegation wished to reiterate its position that the award was an affirmation of the dispute settlement mechanisms under the Convention. It had established reason and right in the South China Sea and demonstrated how similar cases should be viewed. The arbitral tribunal had upheld the sovereign rights of the Philippines and its jurisdiction over its exclusive economic zone, ruling that the claim of historic rights to resources in the seas falling within the "nine-dash line" had no basis in law and was without legal effect.

70. Her delegation welcomed the Study Group's discussion on the applicability of the principle of equity in the context of sea-level rise, as well as the attention it had given to General Assembly resolution 2692 (XXV), entitled "Permanent sovereignty over natural resources of developing countries and expansion of domestic sources of accumulation for economic development", whereby the Assembly had recognized that the principle of permanent sovereignty over natural resources was applicable to marine natural resources.

71. Concerning "Other decisions and conclusions of the Commission", her delegation welcomed the long-overdue decision to include the topic "Non-legally binding international agreements" in the Commission's programme of work, as well as the appointment of a Special Rapporteur for the topic. It noted the establishment of the Working Group on the long-term programme of work for the quinquennium and welcomed the election of its Chair. It also welcomed the reconstitution of the Working Group on methods of work of the Commission, and the election of its Chair, and looked forward to the Group's discussions on the possibility of establishing some mechanism for reviewing the reception by Member States of the past products of the Commission. It welcomed the Commission's discussions on enhancing the interaction with the Sixth Committee and other legal bodies and its intention to prioritize the relationship between the Commission and the Sixth Committee.

72. **Ms. Sayej** (Observer for the State of Palestine) said that it was ridiculous and absurd that Israel was violating every international law, in principle and in spirit, and all relevant United Nations resolutions adopted in the past 75 years, believing that it was a State above the law. During the present session, Israel had attempted to legalize the illegal; rationalize the starving to death of millions of people; justify a medieval-style siege of 2 million people, including 1 million children; and claim that ethnic cleansing was a necessity, labelling civilians as "terrorist partners" and condemning them to either displacement or death. Such behaviour was belittling and insulting to every legal adviser in the meeting room.

73. The occupying Power was painting itself as a champion of the rule of law while contributing to its demise. Despite being armed with nuclear weapons, it was portraying itself as a victim of the people it had occupied for 55 years. Meanwhile, it was killing 14

Palestinians every hour, including a Palestinian woman every 20 minutes and a Palestinian child every 15 minutes. Already, 3,000 children had been slaughtered. Her delegation demanded to know how those present in the meeting room could justify such actions. Israel was showing the world every day how little it cared about international law, and about the international community itself. The world was witnessing a moral travesty and a legal catastrophe. Once the principles of humanity and distinction were removed from the law of war, nothing remained.

74. Recent statements by the representative of Israel before the Committee were consistent with the stated belief of Israeli officials that Palestinians were "human animals" or "children of darkness" to be "eliminated" or made to "leave the world". However, she presumed that those present did not share the belief that the lives of Palestinians were less worthy, less sacred or more expendable than others, or that respect for international law was optional. They must be able to recognize that the actions of Israel were undermining the integrity of the multilateral order and undoing years of hard work aimed at protecting people. No one would want to live in a world that legitimized the starvation of people and other systematic violations of international law.

75. The topic "General principles of law" was of importance to the State of Palestine. The development and consolidation of treaties and conventions and other sources of international law were based on a common understanding of general principles of law and applied across human societies. General principles of law were expressions of both national legal systems and international rules and principles. They were a core of legal ideas and the essence of all legal systems which represented the common denominator in the community of nations and ensured the evolutionary character of international law. They were not limited to a "gap-filling" function but were intrinsic to the international legal system; they did not supplant customary law but complemented it. Her delegation welcomed the Commission's reaffirmation, in the draft conclusions on general principles of law adopted on first reading, that general principles of law were a source of international law and agreed with the inclusion of the category of general principles of law formed within the international legal system in the draft conclusions. While general principles were indications of national legal policies and principles, they were augmented by international recognition.

76. Her delegation appreciated the Commission's notation in its commentary to draft conclusion 7 (Identification of general principles of law formed within the international legal system) that the methodology it would use to identify such general principles would be to carry out an inductive analysis of relevant treaties, customary rules and other international instruments such as General Assembly and Security Council resolutions and declarations. Her delegation wished to emphasize the universal power of the General Assembly and the enforcement power of the Security Council and their indispensability to the formation and formulation of general principles of law.

77. Turning to the topic "Sea-level rise in relation to international law", she said that her delegation welcomed the subtopics of statehood and the protection of persons affected by sea-level rise identified by the Study Group on sea-level rise in relation to international law. Her delegation recognized that the Commission was responding to unprecedented challenges and filling gaps so as to help protect people's livelihoods by developing an inclusive and shared framework. In that effort, however, it should take into consideration certain relevant principles and rules of international human rights law, including the right to a clean, healthy and sustainable environment. In that context, her delegation wished to reiterate that the right to self-determination of peoples affected was unassailable. Sovereignty lay with the people.

78. The State of Palestine was committed to governance of the seas and remained in solidarity with the many communities affected by sea-level rise. That commitment stemmed from the universality and unified character of the United Nations Convention on the Law of the Sea, which was the main legal framework governing all sea-related activities and should play a central role in the Commission's deliberations and outputs on the topic. In that regard, her delegation welcomed the request that had been submitted to the International Court of Justice for an advisory opinion regarding the obligations of States in respect of climate change and was convinced that humanity would rise to the challenge of upholding the identified obligations.

79. **Archbishop Caccia** (Observer for the Holy See), addressing the topic of general principles of law, said that in its efforts to clarify the appropriate methodology for determining the existence and content of single principles of law, the Commission at times appeared to place undue emphasis on the empirical analysis of State practice and judicial decisions. In fact, there were three categories of general principles of law: first, the fundamental principles that established the basic and structural tenets of the international community, such as the principles of sovereign equality and *pacta sunt servanda*; second, the hermeneutical rules and judicial maxims that assisted in the proper interpretation and application of substantive norms, such as the principles

of *lex posteriori* and *iura novit curia*; and third, the general principles distilled from international customary law, such as the principle of non-refoulement, which were broadly shared but, at heart, reflected policy choices. Principles in the first and second categories had not been identified through an analytical study of State practice; rather, they had been derived, by means of deductive reasoning, from the very structure of the international community and from the nature of a self-contained, well-functioning legal system. At their core, they reflected the intrinsic nature of law itself. Any approach that sought to identify general principles solely through empirical means ran the risk of reducing the principles to nothing more than a form of customary law, denying their intrinsic normative value, which was based on reason and natural law.

80. With regard to the draft conclusions on general principles of law adopted by the Commission on first reading, the diverse nature of general principles of law was relevant to draft conclusion 10 (Functions of general principles of law). The function of a principle such as the sovereign equality of States, which established the basic structure of the international community, was vastly different from that of a judicial rule such as *compétence de la compétence*. As noted in paragraph 1 of draft conclusion 10, rules of the latter kind were invoked only when no other rules were available; however, principles of the former type had an almost constitutional nature and underpinned the entire application of international law.

81. The same issue arose with regard to draft conclusion 11 (Relationship between general principles of law and treaties and customary international law). While there was no hierarchy between the various sources of international law when considered in abstract, some principles had a higher normative value, either because they constituted peremptory norms of international law or because they enunciated basic features of the Westphalian system. In its drafting, the Commission should therefore pay greater attention to the actual substance of the principles in question.

82. Regarding draft conclusion 2 (Recognition), his delegation welcomed the substitution of the term "community of nations" for the anachronistic "civilized nations" found in Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice. That change underscored the sovereign equality of all States, as recognized in the Charter of the United Nations. Nevertheless, given the concerns of some delegations regarding the use of the term "nations", his delegation suggested that "international community as a whole" be used instead.

83. The growing urgency of the topic "Sea-level rise in relation to international law" was evident, with rising sea levels already threatening about one quarter of humankind. The habitability of low-lying regions and even the existence of entire States was at risk. The legal and technical aspects of sea-level rise were complex, and decisive international action was needed to identify effective solutions. In order to address effectively the unique challenges posed by climate-induced displacement and enable more targeted and comprehensive legal responses to safeguard the rights of those affected by environmental change, greater conceptual clarity would be required regarding new concepts such as "climate displacement", "climate refugees" and "climate statelessness", which had not yet been defined in international law, as mentioned in the Commission's report (A/78/10).

84. The Commission should continue to analyse the potential relevance of sources of law beyond the United Nations Convention on the Law of the Sea. Developing legal solutions to the challenges posed by sea-level rise on the basis of existing foundations would not only make it easier to assess the impact of those solutions, but would also promote greater consistency and uniformity within international law. In that regard, his delegation reiterated that refugee law could provide a useful model to develop new norms for the protection of those affected by sea-level rise, including the recognition of their right to request asylum, the applicability of the principle of non-refoulement and the right not to be punished for illegal entry.

85. His delegation welcomed the Study Group's discussion on the principle of permanent sovereignty over natural resources. It looked forward to the Group's future work on the subtopics of statehood and the protection of persons in 2024, as well as the final substantive report expected to be issued in 2025.

86. **Ms. Gomez Heredero** (Observer for the Council of Europe) said that her delegation was grateful for the participation of the Co-Chairs of the Commission in the 65th meeting of the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe, held in September 2023 in Strasbourg. The annual participation by the Chair of the Commission in meetings of CAHDI facilitated cooperation and dialogue between the Council of Europe and the Commission.

87. Referring to "Other decisions and conclusions of the Commission", she said that the Council of Europe was pleased with the Commission's decision to include the topic "Non-legally binding international agreements" in its programme of work and to appoint a Special

Rapporteur for the topic. That issue, which was of practical value for Member States and their legal advisers, had been placed on the agenda of CAHDI in 2021. That Committee had since distributed a detailed questionnaire to States and international organizations regarding their practice in respect of the substantive and procedural aspects of non-legally binding agreements and the applicable rules. The Committee had later renamed the item on its agenda to "Non-legally binding instruments in international law", replacing the term "agreements" with the term "instruments", which better reflected the non-legally binding nature of the texts under discussion. A report on the practice of States and international organizations, including main trends, based on the responses to the questionnaire, had been presented at the 65th meeting of CAHDI, which had also prepared questionnaires on the related topics of treaties not requiring parliamentary approval and soft law instruments.

88. The topic "Settlement of international disputes to which international organizations are parties", included in the Commission's programme of work in 2022, had been on the agenda of CAHDI since 2014. CAHDI had conducted an analysis of main trends in the responses to a questionnaire on the subject in 2017, and, although the data was currently still confidential, it would be published once States had had an opportunity to review and revise their contributions.

89. **Ms. Rubinshtein** (Israel), speaking in exercise of the right of reply, said that the Palestinian representative had disseminated incomplete information and exaggerated figures in her statement. Israeli authorities had recently released intelligence proving that Hamas had placed its main headquarters in the tunnels underneath Shifa' Hospital in Gaza City, thereby using the hospital for military purposes, contrary to international humanitarian law, and treating the doctors and patients as human shields. If the Palestinian representative was genuinely concerned with the well-being of the Palestinian population in Gaza, she should address her remarks directly to Hamas and condemn it for its gruesome actions and its use of the civilian population of Gaza as human shields, which greatly affected the situation on the ground.

90. **Mr. Vázquez-Bermúdez** (Special Rapporteur for the topic "General principles of law") said that the participation of a large number of delegations in the Committee's discussion of the topic "General principles of law" had demonstrated the importance given by States to clarifying certain aspects of the topic. He had duly noted all the comments, observations and suggestions made during the Committee's discussion of the topic and would take them into account in preparing his next report, which he would present to the Commission to inform its second reading of the draft conclusions and the commentaries thereto.

91. **Mr. Aurescu** (Co-Chair of the Study Group on sea-level rise in relation to international law), speaking on behalf of the two Co-Chairs on issues related to the law of the sea, said that Member States had demonstrated a steadily growing interest in the topic of sea-level rise in relation to international law and that their comments would guide the work of the Study Group and its Co-Chairs. The Co-Chairs appreciated the support of Member States for the focus of the work of the Study Group, as reflected in the additional paper (A/CN.4/761 and A/CN.4/761/Add.1) to the first issues paper, on the concepts of legal stability, security, certainty and predictability, with concrete application regarding the preservation of maritime zones, the fixing or freezing of baselines, and the possible interpretation of the United Nations Convention on the Law of the Sea as imposing no obligation on States to keep baselines and outer limits of maritime zones under review or to update coordinates or charts once deposited with the Secretary-General, and the understanding that such maritime zones and the rights and entitlements that flowed from them must continue to apply without reduction, notwithstanding any physical changes connected to sea-level rise.

92. Member States had also reiterated their general support for the Study Group's conclusion that sea-level rise could not be considered, under article 62 of the 1969 Vienna Convention on the Law of Treaties, as a fundamental change of circumstances justifying the modification of existing maritime delimitation treaties and the maritime boundaries established by them. The Study Group would duly consider all the nuances expressed in the statements by Member States, especially those urging caution in the examination of certain legal aspects, and all elements of guidance regarding its future work on the topic.

93. The Co-Chairs noted with interest that in nearly all the statements delivered on the topic at the Committee's current session, delegations had made reference to the intrinsic connection that existed between the work of the Study Group and the advisory opinions on climate change requested from various courts. The work of the Study Group would, for instance, be useful to the International Court of Justice in elaborating its advisory opinion on the obligation of States in respect of climate change.

94. **The Chair** invited the Committee to begin its consideration of chapters V and VI of the report of the

International Law Commission on the work of its seventy-fourth session (A/78/10).

95. **Mr. Bouquet** (Representative of the European Union, in its capacity as observer), speaking in accordance with General Assembly resolution 65/276 and referring to the topic "Settlement of disputes to which international organizations are parties", said that, as an international organization, the European Union was greatly interested in the Commission's work on the topic. His delegation noted the Commission's decision to change the title of the topic by deleting the word "international" before "disputes", as also reflected in the wording of draft guideline 1 (Scope) of the draft guidelines on settlement of disputes to which international organizations are parties provisionally adopted by the Commission. That change enlarged the scope of the topic to include any issues of international public law that might arise in the context of legal disputes under national law between international organizations and private parties. It would be helpful to clarify that the draft guidelines covered only the international law aspects of disputes involving international organizations by rewording draft guideline 1 to read: "The present draft guidelines concern the settlement of international law aspects of disputes to which international organization are parties." His delegation understood that the Commission intended to address, among other international public law issues arising in the context of private law proceedings, the question of immunities and privileges. It would carefully follow the Commission's work on that delicate issue.

96. As was indicated in paragraph (2) of the commentary to draft guideline 1, the draft guidelines covered an international organization's internal disputes with its member States. In that regard, the European Union noted that international organizations were sometimes subject to specific dispute settlement obligations pursuant to their constituent instruments, as also acknowledged by the Commission in paragraph (33) of its commentary to draft guideline 2 (Use of terms). The European Union, although established by international public law instruments, had developed a *sui generis* legal order. Any internal disputes in relation to European law between two or more member States of the European Union or between one or more member States of the European Union and the institutions of the European Union, including disputes related to the implementation of obligations under international public law, fell within the exclusive jurisdiction of the Court of Justice of the European Union, in accordance with that Court's jurisprudence. Although the Court could use international public law principles for interpretative purposes, the disputes were governed by European law and remained subject to the specificities of that *sui generis* legal framework. For that reason, the European Union suggested the addition of a second paragraph in draft guideline 1 that would read: "These draft guidelines are without prejudice to any specific dispute settlement obligations in relation to their internal disputes or to any distinctive aspects of the legal framework established by the constituent instrument of the international organization".

97. With regard to the definition of "international organization" in draft guideline 2, the European Union, which was itself a member of several international organizations, on its own or with its member States, fully agreed with the Commission that international organizations could include as members, in addition to States, other entities, such as international organizations. However, the part of the definition that referred to "other entities", while it had been taken from previously agreed definitions, such as the one contained in the articles on the responsibility of international organizations, was vague. In neither the draft guideline nor the commentary thereto were private law entities excluded from the scope of the term. The Commission should clarify, either in subparagraph (a) of draft guideline 2 or in the commentary to the draft guideline, that the "other entities" that could be full members of international organizations were international public law entities, in other words, other entities that were themselves established or defined under, and in accordance with, international public law, such as international organizations or territories. Although private law entities could participate in the activities of certain international organizations, they were not usually admitted as full members of such international organizations.

98. The constituent instrument establishing an international organization could take various forms. That flexibility was reflected in the articles on the responsibility of international organizations, in which an international organization was defined as an organization established by a treaty or other instrument governed by international law. However, it would be advisable to clarify, either in draft guideline 2 (a), or in the commentary to the draft guideline, that the establishment of an international organization required formal adherence to, or acceptance or ratification of, the constituent instrument by its members. The commentary to subparagraph (a) of draft guideline 2 contained a reference to the United Nations Industrial Development Organization as an example of an international organization that was not instituted by a treaty. However, upon its transformation into a specialized

agency, that organization had been endowed with a constitution that provided for formal signature, ratification, acceptance or approval thereof by the organization's founding members and the subsequent possibility of formal accession to it by other States.

99. **Mr. Hoffmeister** (Representative of the European Union, in its capacity as observer), speaking in accordance with General Assembly resolution 65/276 and referring to the topic "Prevention and repression of piracy and armed robbery at sea", said that the Commission's work on the topic was of great importance to the international community and to future generations. The European Union noted that, in its work on the topic, the Commission was building on a strong body of international law, in particular, article 101 of the United Nations Convention on the Law of the Sea, for the definition of piracy, and paragraph 2.2 of the International Maritime Organization Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, for the definition of armed robbery at sea. Regarding its intention to clarify and build upon existing frameworks and academic studies and identify new issues of common concern, as reflected in its report (A/78/10), the Commission should address any elements of the definitions that could trigger questions of interpretation or application in view of the evolving nature of modern piracy, including the consequences of technological developments.

100. His delegation was pleased that the Special Rapporteur had considered the law and practice of the European Union and its member States in his first report (A/CN.4/758). As reflected therein, the European Union was actively contributing to the fight against piracy and armed robbery at sea, which constituted evolving security threats that needed to be addressed through a cross-sectoral approach, respect for international law and maritime multilateralism. In its resolution 2383 (2017), among others, the Security Council had commended the efforts of Operation Atalanta of the European Union Naval Force, which, over the previous 15 years, had been effective at suppressing piracy and protecting ships cruising off the coast of Somalia. The Security Council had also welcomed the activities of the European Union Capacity-Building Mission in Somalia, which assisted Somalia in strengthening its maritime security capacity in order to enable it to enforce maritime law more effectively, and had noted the efforts of several actors, including the European Union, to develop regional judicial and law enforcement capacity to investigate, arrest and prosecute suspected pirates and to incarcerate convicted pirates in a manner consistent with applicable international human rights law. The European Union had concluded transfer agreements with States in the region, which had been instrumental in the transfer of 171 suspected pirates by Operation Atalanta to regional authorities with a view to their prosecution. More recently, the European Union had strengthened its role as a global maritime security provider by piloting the new Coordinated Maritime Presences concept in the Gulf of Guinea in close cooperation with its African partners through the Yaoundé Architecture. The European Union welcomed the fact that its cooperation with coastal States in combating piracy had been acknowledged in the Special Rapporteur's first report. It also commended the regional initiatives being undertaken in that regard. The European Union stood ready to contribute to the Special Rapporteur's second report focused on regional and subregional practices and initiatives for combating piracy and armed robbery at sea.

101. **Ms. Theeuwen** (Kingdom of the Netherlands), referring to the topic "Settlement of disputes to which international organizations are parties", said that her delegation supported the Commission's decision not to include the word "international" before "disputes" in draft guideline 1 (Scope) of the draft guidelines on settlement of disputes to which international organizations are parties provisionally adopted by the Commission, and also to amend the topic's title accordingly, to make it clear that the draft guidelines would encompass all kinds of disputes to which international organizations were parties, including disputes of a private law character. The immunity of international organizations often prevented individuals who had suffered harm from the conduct of an international organization from bringing a claim before a court, which represented a gap in the legal system, Her delegation would therefore welcome further work by the Commission specifically on ways to strengthen the mechanisms for resolving disputes of a private law character to which international organizations were parties. That would require the Commission to strike a delicate balance between the immunity enjoyed by international organizations and the legitimate expectation of individuals to have access to a remedy in a dispute.

102. Turning to the topic "Prevention and repression of piracy and armed robbery at sea" and referring to the draft articles on the prevention and repression of piracy and armed robbery at sea provisionally adopted by the Commission, she said that her Government welcomed the Commission's decision not to duplicate existing frameworks and academic studies, as noted in paragraph (3) of the commentary to draft article 1 (Scope), and strongly supported its decision not to seek to alter any of the rules set forth in existing treaties and to preserve

the integrity of the definition of piracy contained in article 101 of the United Nations Convention on the Law of the Sea, as indicated in paragraph (3) of the commentary to draft article 2 (Definition of piracy). In that regard, her delegation noted that paragraph 1 of draft article 2 was a duplication of article 101 of the Convention, but that the substance of article 102 thereof, which pertained to acts of piracy committed by a warship, government ship or government aircraft whose crew had mutinied, had been omitted. Her Government would welcome a clarification of the reason for that omission.

103. **Mr. Popkov** (Belarus), referring to the topic "Settlement of disputes to which international organizations are parties", said that his delegation supported the Commission's work on the topic in view of the increasing number of international organizations and their growing involvement in various fields of activity, potentially giving rise to legal disputes of a public or private law character. It supported the intention of the Commission to conduct a comprehensive study of the settlement mechanisms used for all types of disputes to which international organizations were parties, in particular the types of disputes that could arise between States and international organizations and international organizations and their internal organs. The current international legal practice with regard to the settlement of such disputes was inconsistent, which could undermine trust and significantly impede cooperation between international organizations and their member States.

104. The question of settlement of disputes between international organizations and individuals or legal persons also deserved special attention. International organizations, including a number of organizations within the United Nations system, entered into contracts or engaged in financial, economic, investment or other activity that could give rise to disputes requiring special settlement procedures, including ones to which public international law norms did not apply. The Commission should undertake a comprehensive analysis of questions related to the unequal legal status of the parties to such disputes. States often granted international organizations jurisdictional and other immunities under international agreements or on another legal basis, which could pose a problem for individuals or legal persons affected by non-fulfilment of contractual obligations or other violations of their rights. The immunity of international organizations must not prevent the fair settlement of disputes and result in individuals or legal persons being denied justice in situations where justice could have been served without seriously impeding the functioning of the organization.

105. In the case of disputes between international organizations and their staff members, which in many international organizations of a universal character and regional organizations were subject to an internal legal order and were settled by internal judicial and administrative organs, a consolidated set of recommendations for international organizations on handling such disputes could improve the quality of the settlement procedures used, uphold the rights of staff and strengthen the rule of law in those organizations. It would also be valuable if the Commission were to prepare recommendations on the appropriate and admissible internal mechanisms or measures that could be taken by international organizations to settle disputes with individuals or legal persons where the State of nationality exercised diplomatic protection on their behalf against the international organization.

106. As to the form that the output of the Commission's work on the topic should take, his delegation was disappointed that the Commission did not envision the elaboration of draft articles that could form the basis for a treaty. It was unclear why the Commission considered it impossible to elaborate general provisions concerning certain categories of disputes to which international organizations were parties, such as disputes between States and international organizations and disputes between international organizations and individuals and legal persons. Such draft articles would greatly add to the value of the Commission's work on the topic, would be a substantial improvement of the law governing international organizations and would contribute to the development of international dispute settlement mechanisms. His delegation hoped that the Commission would reconsider its position on the matter as it continued its work on the topic.

107. Referring to the two draft guidelines on settlement of disputes to which international organizations are parties provisionally adopted by the Commission, his delegation agreed with the Commission's definition of the term "international organization" as "an entity possessing its own international legal personality" in subparagraph (a) of draft guideline 2 (Use of terms). The formulation underscored that in the process of dispute settlement, an international organization was a party capable of independently taking significant legal decisions and of incurring international or other responsibility. However, it was his delegation's view that the draft definition should also reflect the fact that, in addition to acquiring an international legal personality upon its establishment "by treaty or other instrument governed by international law", an international organization could also be established under national law and acquire an international legal

personality if provided for in a treaty or if acceded to by other States.

108. His delegation approved of the formulation used in draft article 2 (c), whereby the term "means of dispute settlement" reflected all potential means of dispute settlement referenced in Article 33 of the Charter of the United Nations. The Commission might find it useful to draw on some of the outcomes of the discussions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization in its consideration of the means of dispute settlement. It was also his delegation's view that future work on the topic must continue to be closely linked to the Commission's work on the topic of responsibility of international organizations.

109. Turning to the topic "Prevention and repression of piracy and armed robbery at sea", he said that the United Nations Convention on the Law of the Sea served as the framework for the Commission's study of the question of piracy, but not of armed robbery at sea. Therefore, the practical application of relevant international law norms by specialized international organizations, such as the International Maritime Organization, and the latest research into measures aimed at countering piracy and armed robbery at sea, were particularly valuable.

110. Given that piracy was a crime of international concern that was committed on the high seas outside the jurisdiction of any State and to which universal jurisdiction applied, it would be worthwhile to examine in detail the obligations of a State to repress the similar crime of armed robbery at sea within its territorial waters and to elaborate recommendations on specific enforcement measures that States should take in areas within their exclusive national jurisdiction.

111. Noting that modern-day acts of piracy were carried out not only using vessels and aircraft, as was the case when the definition of piracy was elaborated in the twentieth century, but also using pilotless watercraft and aircraft and other devices to carry out cyberattacks at sea and in the air, the Commission should reflect the effect of such technological advances in the definitions of piracy and armed robbery at sea.

112. Recognizing that piracy and armed robbery at sea could in certain cases threaten international peace and security, the Security Council had called for the establishment of a legal framework for their prevention and repression. In that connection, the draft articles on the prevention and repression of piracy and armed robbery at sea should enable close cooperation among States in combating all manifestations of piracy and armed robbery at sea with a view to minimizing the threat such crimes posed to international security.

113. **Ms. Duc Le** Hanh (Viet Nam), referring to the topic "Settlement of disputes to which international organizations are parties" and the draft guidelines on settlement of disputes to which international organizations are parties provisionally adopted by the Commission, said that her delegation agreed with the Commission's view, expressed in paragraph (8) of the commentary to draft guideline 1 (Scope), that it was not feasible to design across-the-board draft articles that might eventually form the basis for a treaty and was more apt to restate the existing practices of international organizations concerning the settlement of their disputes. However, given the many differences in the nature of the disputes, the parties to them and the available settlement mechanisms, and the fact that the Commission was at a very early stage of its work, her delegation suggested that the Commission first draw a set of conclusions from those practices before it developed guidelines intended to direct States, international organizations and other users to answers that were consistent with existing rules or that seemed most appropriate for contemporary practice.

114. With regard to draft guideline 1, her delegation took note of the Commission's decision to expand the scope of the draft guidelines to cover disputes between international organizations, as well as disputes to which international organizations were parties, including ones of a public or a private law character. It would be helpful if the Commission could clarify whether the scope of its work on the topic would cover disputes between an international organization and its member States regarding the organization's constituent instrument. Specifically, it was her delegation's view that the Commission should not elaborate conclusions or guidelines on disagreements between the decision-making body of an organization and a State member thereof regarding the payment of annual contributions.

115. Her delegation had reservations regarding the definition of "international organization" contained in draft guideline 2 (a), in which it was stated that an international organization might include as members, in addition to States, "other entities". While there seemed to be no doubt that the members of an international organization could include States and other international organizations, the Commission should clarify whether the term "other entities" encompassed private persons, including natural and legal persons under domestic law. The wording had been taken from the definition of "international organization" used in the articles on the responsibility of international organizations, the focus of which was on situations where international organizations were liable for violations of their obligations and were, therefore, the respondents. By

contrast, the Commission's work on the current topic would cover disputes in which international organizations could be either the respondents or the claimants.

116. Turning to the topic "Prevention and repression of piracy and armed robbery at sea", she said that piracy and armed robbery at sea posed a serious threat to global maritime security by jeopardizing the safety of seafarers and vessels and the uninterrupted flow of international trade. The Commission's work would serve as an essential foundation for codifying regulations on the prevention and suppression of piracy on the high seas and in any other place beyond national jurisdiction.

117. With regard to the draft articles on the prevention and repression of piracy and armed robbery at sea provisionally adopted by the Commission, the current definition of piracy in Vietnamese law encompassed *grosso modo* both piracy and armed robbery at sea as defined in draft article 2 (Definition of piracy) and draft article 3 (Definition of armed robbery at sea). In her delegation's view, in spite of some divergence in the definitions of piracy and armed robbery at sea in international treaties and domestic laws, as was often the case with norms derived from customary law, States could agree that measures to prevent and repress piracy should be comprehensive, in line with the achievement of the Sustainable Development Goals, in particular Goal 14; that States had a duty to cooperate in addressing piracy; that the issue of piracy should be depoliticized; that the flag State of the victim ship, but also the State of the offender's nationality, had priority in the prosecution of acts of piracy; and that all activities at sea must comply with the United Nations Convention on the Law of the Sea, in particular in respect of the maritime zones established in accordance with the Convention.

The meeting rose at 6 p.m.