Chapter VIII
Sea-level rise in relation to international law

A. Introduction

128. At its seventy-first session (2019), the International Law Commission decided to include the topic "Sea-level rise in relation to international law" in its programme of work. The Commission also decided to establish an open-ended Study Group on the topic, to be co-chaired, on a rotating basis, by Mr. Bogdan Aurescu, Mr. Yacouba Cissé, Ms. Patrícia Galvão Teles, Ms. Nilüfer Oral and Mr. Juan José Ruda Santolaria. The Study Group discussed its composition, its proposed calendar and programme of work, and its methods of work. At its 3480th meeting, on 15 July 2019, the Commission took note of the joint oral report of the Co-Chairs of the Study Group.[271]

129. At its seventy-second session (2021), the Commission reconstituted the Study Group, and considered the first issues paper on the topic, related to the law of the sea,[272] which had been issued together with a preliminary bibliography.[273] At its 3550th meeting, on 27th July 2021, the Commission took note of the joint oral report of the Co-Chairs of the Study Group.[274]

130. At its seventy-third session (2022), the Commission reconstituted the Study Group, and considered the second issues paper on the topic, related to statehood and the protection of persons affected by sea-level rise,[275] which had been issued together with a preliminary bibliography.[276] At its 3612th meeting, on 5 August 2022, the Commission considered and adopted the report of the Study Group.[277]

B. Consideration of the topic at the present session

131. At the present session, the Commission reconstituted the Study Group on sea-level rise in relation to international law, chaired by the two Co-Chairs on issues related to the law of the sea, namely Mr. Aurescu and Ms. Oral.

132. In accordance with the agreed programme of work and methods of work, the Study Group had before it the additional paper (A/CN.4/761) to the first issues paper on the topic, prepared by Mr. Aurescu and Ms. Oral, and issued on 20 April 2023. A selected bibliography, prepared in consultation with members of the Study Group, was issued on 9 June 2023 as an addendum to the additional paper (A/CN.4/761/Add.1).

133. The Study Group, which at the current session comprised 32 members, held 12 meetings, from 26 April to 4 May and from 3 to 5 July 2023.

134. At its 3655th meeting, on 3 August 2023, the Commission considered and adopted the report of the Study Group on its work at the present session, as reproduced below.

[271] *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10* (A/74/10), paras. 265–273.
[272] A/CN.4/740 and Corr.1.
[273] A/CN.4/740/Add.1.
[274] *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), paras. 247–296.
[275] A/CN.4/752.
[276] A/CN.4/752/Add.1.
[277] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10* (A/77/10), paras. 153–237.

1. Introduction of the additional paper (A/CN.4/761 and Add.1) to the first issues paper by the Co-Chairs

(a) General introduction of the topic

135. At the first meeting of the Study Group, held on 26 April 2023, four of the Co-Chairs (Mr. Aurescu and Ms. Oral, and Ms. Galvão Teles and Mr. Ruda Santolaria) noted that the topic had generated great and increased interest among members of the Commission and Member States, including, but not exclusively, those particularly affected by sea-level rise. The Co-Chairs briefly recalled the manner in which the topic had been placed on the programme of work of the Commission, underlining the progress that had been achieved so far on all three subtopics under consideration through robust discussions within the framework of the Study Group and the Commission and further enriched by Member States' comments conveyed either in the Sixth Committee or in response to questions raised by the Commission. Within a few years, the topic had become cross-regional and global in nature, and of immediate relevance to Member States, which required global solutions of varying kinds. Some regions, including those most affected by the phenomenon, had been particularly active in shedding light on the urgency of addressing the multiple challenges ahead and in identifying potential legal solutions. In that regard, three of the Co-Chairs (Ms. Galvão Teles, Ms. Oral and Mr. Ruda Santolaria) indicated that they had participated in a regional conference on preserving statehood and protecting persons in the context of sea-level rise, organized by the Pacific Islands Forum and held in Nadi, Fiji, from 27 to 30 March 2023, and they stressed the importance of the work of such regional organizations. In addition to the Commission, the Security Council and various United Nations bodies had addressed the topic of sea-level rise, and the topic had been included in requests for advisory opinions addressed first to the International Tribunal for the Law of the Sea[278] and then to the International Court of Justice.[279]

(b) Procedure followed by the Study Group

136. Also at the first meeting of the Study Group, Mr. Aurescu and Ms. Oral, in their capacity as Co-Chairs addressing issues related to the law of the sea, indicated that the purpose of the meetings scheduled in the first part of the session was to allow for an exchange of views on the additional paper. The content of the additional paper had been guided by the outcome of the meetings of the Study Group held during the seventy-second (2021) session of the Commission,[280] and by the specific issues flagged by Member States in comments conveyed either in the Sixth Committee or in response to questions raised by the Commission. As such, the additional paper addressed a number of principles and issues on which the Study Group had specifically requested further study in 2021. In that regard, the Co-Chairs explained that, owing to word-count limitations, they had addressed a selection of these principles and issues only, giving priority to those on which Member States' had commented. The additional paper was structured in such a way as to including preliminary observations on each principle or issue addressed, with the expectation that the members of the Study Group would then reach conclusions and define practical solutions. The Co-Chairs invited members to engage in a structured and interactive debate, drawing upon the contents of the additional paper, and to provide input on a draft bibliography on the subtopic, to be issued as an addendum to the additional paper. As had been the case for the topic during the two preceding sessions of the Commission, the outcome of the first part of the session would be an interim report of the Study Group, to be considered and complemented during the second part of the session so as to reflect a further interactive discussion on the future programme of work. The report would then be agreed upon in the Study Group and

[278] International Tribunal for the Law of the Sea, Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Order of 16 December 2022, *ITLOS Reports 2022–2023*, to be published.

[279] International Court of Justice, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, General Assembly resolution 77/276 of 29 March 2023.

[280] *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), paras. 247–296.

subsequently presented by the Co-Chairs to the Commission, with a view to being included in the annual report of the Commission. That procedure, agreed upon by the Study Group, was based on the 2019 report of the Commission.[281]

137. The Co-Chairs also recalled that, as outlined in chapter XIII of the additional paper, which addressed the future programme of work of the Study Group, in the present quinquennium, the Study Group would revert to each of the subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – and would then seek to prepare a substantive report on the topic as a whole by consolidating the results of the work undertaken since 2019, expected to be issued in 2025.

2. Summary of the exchange of views

138. Members of the Study Group underscored the importance of the topic for the international community, noting that sea-level rise 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. In that regard, they recalled that the Security Council had held a meeting on 14 February 2023 on the subject of "Sea-level rise: implications for international peace and security", under the agenda item "Threats to international peace and security", at which Mr. Aurescu, in his capacity as Co-Chair, had delivered a briefing on the progress of the Commission's work.[282] Furthermore, the Inter-American Juridical Committee had recently appointed a rapporteur on the topic of legal implications of sea-level rise in the inter-American regional context, Mr. Julio José Rojas Báez. Among other initiatives, a special meeting of the Committee on Juridical and Political Affairs of the Organization of American States was held on 4 May 2023 on the consequences of sea-level rise and its legal implications. In that regard, the Study Group should exercise caution when interpreting the silence of some affected States, which does not necessarily reflect a position on the interpretation of the United Nations Convention on the Law of the Sea.[283] Sea-level rise had led to the emergence of new concepts, such as "climate displacement", "climate refugees" and "climate statelessness", that were undefined in international law, and the term "specially affected State" ought to be used with caution, given its multiple implications since it did not reflect the fact that a large number of States were affected, in particular developing countries.

139. Members welcomed the work of the Co-Chairs and the methodological, detailed and comprehensive nature of the additional paper, underlining that it was well researched and constituted a sound basis for the Commission to meaningfully discharge its mandate.

(a) Issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones

(i) Introduction by the Co-Chair

140. At its first and second meetings, held on 26 and 27 April 2023, the Study Group had an exchange on chapter II of the additional paper, on the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones. The Co-Chair (Mr. Aurescu) recalled that the preliminary observations in paragraphs 82 to 95 of the additional paper were based on numerous views expressed over the period from 2021 to 2022 on the meaning of the terms "legal stability", "certainty" and "predictability", including in the Sixth Committee, where some Member States had requested further exploration of those terms. The Co-Chair noted that Member States had adopted a pragmatic approach, referring to legal stability as inherently linked to the preservation of maritime zones, and that no States, even those with national legislation providing for ambulatory baselines, had contested that approach or the preliminary observations in paragraph 104 of the first issues paper, which supported the solution of fixed baselines.

141. The Co-Chair observed 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

[281] *Ibid., Seventy-fourth Session, Supplement No. 10* (A/74/10), paras. 270–271.

[282] See S/PV.9260 and S/PV.9260 (Resumption 1).

[283] United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.

sea-level rise in order to provide practical guidance to affected States. Although, in the past, before the Commission had embarked on the topic of sea-level rise, the doctrine had interpreted the Convention to the effect that the baselines and outer limits of the territorial sea, contiguous zone and exclusive economic zone were ambulatory, Member States had, in ever-increasing numbers, expressed the contrary view, pointing to an interpretation of the Convention in the sense that it did not forbid or exclude the option of fixing baselines. In doing so, they had stressed the importance of interpreting the Convention with a view to preserving maritime zones, and had noted that the Convention did not prohibit the freezing of baselines.

142. The Co-Chair noted that few Member States had made references to customary international law, and that those States had considered that there was no obvious evidence of *opinio juris* concerning the existence of a custom regarding the fixing of baselines.

(ii) Concept of legal stability

143. Members of the Study Group noted that the concept of legal stability was encapsulated in the United Nations Convention on the Law of the Sea. In addition, it contributed to the maintenance of international peace and security. Although a general view was expressed emphasizing the importance of that legal concept, it was also pointed out that there was a need to exercise caution when approaching it, as it could not be considered in a vacuum and was difficult to separate from other concepts, such as the principle of the immutability of boundaries. It was also noted that the loss of land territory, which could result from failure to respect the concept of legal stability, would lead to catastrophic consequences for the most vulnerable States.

144. It was further stated that the concept of legal stability was not necessarily linked only to the safety of navigation: the concepts of legal stability and respect for existing boundaries reflected customary international law, and as such could also be applied to maritime boundaries. A view was expressed that the freezing of baselines, and the consequent lack of an obligation to report on updated baselines, could pose hazards to the safety of navigation and could potentially be in contravention of the relevant instruments concerning the safety of navigation.

(iii) Ways in which the concept of legal stability is reflected in the context of sea-level rise

a. Interpretation of the United Nations Convention on the Law of Sea

145. Members of the Study Group broadly supported the preliminary observations of the Co-Chairs in favour of fixed baselines, considering, *inter alia*, that the United Nations Convention on the Law of the Sea did not prohibit the option of fixed baselines, and that it was critical that the final outcome of the Commission's work on the topic should guarantee the sovereign rights that States were claiming over their maritime spaces. Caveats and doubts relating to the interpretation of the Convention were expressed, including in relation to the manner in which to achieve that objective.

146. A view was expressed that the United Nations Convention on the Law of the Sea did not equate the declaration and publication of the baselines with the acquisition of sovereignty or sovereign rights over the spaces affected by those baselines; otherwise, it could be concluded that the Convention allowed a State to decide unilaterally on its maritime spaces.

147. Differing views were expressed as to the applicability to sea-level rise of the concept of the legal stability of baselines under article 7, paragraph 2, of the United Nations Convention on the Law of the Sea and of the outer limits of the continental shelf under article 76, which had been raised in the first issues paper and by some States.

148. Another suggested option to ensure legal stability was to amend the United Nations Convention on the Law of the Sea, which was deemed difficult. A meeting of States parties to the Convention might be considered with a view to interpreting that instrument, including a close examination of the text, context, and object and purpose of its relevant provisions.

b. Emergence of rules of customary international law

149. Some members considered that a further option with a view to ensuring legal stability would be the emergence of a rule of customary international law. Reference was made to the prima facie indication of the formation of a new rule of customary international law providing for fixed baselines. However, it was opined that it was too early to draw any related conclusions as to the existence of widespread practice and *opinio juris* in favour of fixed baselines and the preservation of maritime zones, whether on the regional or the international plane. Emphasis was nonetheless placed on the new trend of practices and views of States based on a good-faith interpretation of the United Nations Convention on the Law of the Sea. It was further stressed that the Commission should be clear in stating that the existence of practice could justify not only a rule of customary international law, but a certain interpretation of the Convention. A view was expressed that determining whether a rule of customary international law existed was beyond the mandate of the Commission.

150. On the issue of fixed baselines, and recalling the 2021 declarations by the Pacific Islands Forum and the Alliance of Small Island States,[284] members stressed that there was no explicit provision in the United Nations Convention on the Law of the Sea requiring State parties to update their baselines and outer limits of maritime zones in response to changes in coastlines as a result of sea-level rise. In that regard, it was observed that there was a difference between legally freezing the territorial sea baselines and not updating published baselines, since the latter was simply an administrative matter, while the former could possibly involve the creation of a new rule of law and should be done with great caution. It was nonetheless noted that if there was an obligation to update baselines, it should have been expressly mentioned in the Convention. At the same time, it was also stated that the Commission should not take a one-sided position, as both the permanent and ambulatory approaches were legal and viable, and should instead consider favouring practical solutions.

c. Subsequent agreements and subsequent practice

151. It was suggested that subsequent agreements, as provided for in article 31 of the Vienna Convention on the Law of Treaties,[285] might be useful as an authentic means of interpretation of the United Nations Convention on the Law of the Sea. Such interpretation could take the form of a resolution of a meeting of States parties to the Convention, as referred to in paragraph 148 above. It was underlined that subsequent practice as a means of interpretation of the United Nations Convention on the Law of the Sea might also be a useful way forward in lieu of the emergence of a rule of customary international law. Some members expressed the view that consideration would then also need to be given to how subsequent practice satisfied the relevant legal benchmarks, as developed by the Commission.[286]

152. It was further emphasized that the current practice was insufficient to justify the existence of either a regional or a general rule of customary international law. It could nonetheless be used to support a particular interpretation of the United Nations Convention on the Law of the Sea.

(iv) Sui generis *regimes*

153. On the topic of *sui generis* regimes, questions were raised as to how the international community could address the problems encountered by States who faced a loss of territory

[284] Pacific Islands Forum Leaders' Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, 6 August 2021 (available at https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/); and Alliance of Small Island States Leaders' Declaration, 22 September 2021 (available at https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/).

[285] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 331.

[286] See conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), para. 51.

owing to sea-level rise. It was suggested that the Study Group should consider *sui generis* status for territories submerged owing to sea-level rise, in particular because sea-level rise was not a natural phenomenon, but was human-caused. While support was expressed for adopting a flexible approach to baselines – ambulatory baselines for certain scenarios and fixed baselines for others – a call was made for reflection and deliberation on the merits of *sui generis* regimes.

(v) Concluding remarks by the Co-Chairs

154. In his concluding remarks, the Co-Chair (Mr. Aurescu) thanked the members of the Study Group for their valuable contribution and welcomed their focus on the question of the interpretation of the United Nations Convention on the Law of the Sea, which was an important subject for Member States, as reflected in the additional paper.

155. As concerns had been expressed that the additional paper did not provide a clear direction for the Study Group's future work, he recalled that it was the Co-Chairs' duty to present their analysis, including preliminary observations, to enable the Study Group to collectively reflect on the issues addressed and reach conclusions.

156. The Co-Chair stressed the importance of further exploring the issue of submerged territories, which had not been raised in 2021. Given that the issue was related to the law of the sea and to statehood, he suggested that it be addressed in the Study Group's consolidated final report, expected to be issued in 2025.

157. The Co-Chair recalled that interest had been expressed in determining the moment of reference from which it could be considered that baselines were fixed, which could be done in consultation with scientists on sea-level rise.

158. With regard to the suggestion to amend the United Nations Convention on the Law of the Sea, he recalled that the Commission had agreed, in the syllabus prepared in 2018,[287] to limit the Study Group's mandate so that it would not propose any amendments to the Convention, as also reflected in the positions expressed by Member States in the light of the delicate balance between the rights and obligations under the Convention. Nonetheless, consideration could be given to interpreting the Convention.

159. Noting the suggestion that the Study Group could prepare practical guidance for States, the Co-Chair expressed the view that consideration ought to be given to providing practical legal solutions in line with the requests conveyed by Member States, so as to ensure legal stability as an outcome of the various measures that they could take.

160. The Co-Chair welcomed the view that the term "specially affected State" should be used with caution, given that two thirds of Member States were currently or could in the future be affected in some way by sea-level rise.

161. The Co-Chair noted that it was difficult to evaluate State practice within the context of sea-level rise, as it appeared to be the decision of certain States or groups of States not to update coordinates or charts deposited with the Secretary-General. As such, practice in those cases was in fact inaction, absent the visibility usually relied upon to determine the content of such practice.

162. The Co-Chair (Ms. Oral) noted that the mandate of the Study Group was a mapping exercise of the legal questions raised by sea-level rise and its interrelated issues, and that the additional paper had been based on the requests made by members of the Study Group further to the debate in 2021, except for the issue of nautical charts.

(b) Immutability and intangibility of boundaries

(i) Introduction by the Co-Chair

163. At the third meeting of the Study Group, held on 1 May 2023, the Co-Chair (Ms. Oral) recalled that chapter III of the additional paper related to the existing definitions and functions of boundaries, and contained an examination of relevant international case law and

[287] *Ibid*., annex B.

preliminary observations in paragraph 111. The chapter further addressed the principle of *uti possidetis juris* and its applicability to existing maritime boundaries. The Co-Chair observed that the intention 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.

(ii) General comments

164. Several members generally agreed with the Co-Chairs' preliminary observations. It was also emphasized that the question of immutability and intangibility of boundaries should be addressed from the perspective of the principle of legal stability.

165. Some members noted that the intangibility of boundaries was a fundamental principle of international law, and called upon the Study Group to place more emphasis on it. At the same time, a view was expressed that the legal stability of boundaries had limited application in the field of the law of the sea. According to another view, application of the principle of the immutability of boundaries to maritime delimitations should have some degree of flexibility, as maritime entitlements were always based on geographic features and there was no settled case law with regard to the effect of physical land changes on maritime boundaries.

(iii) Application of the principle of uti possidetis juris

166. Several members called for caution in applying the principle of *uti possidetis juris*, which in their view was predominantly or exclusively applied in the context of succession of States. It was also recalled that the principle had been crystallized in the context of decolonization. Several members disagreed with the view expressed in the additional paper that *uti possidetis juris* was considered a general principle of law. Some members emphasized that the principle was applicable to pre-existing titles only. A view was expressed that introducing *uti possidetis juris* to maritime delimitations could affect the integrity of the United Nations Convention on the Law of the Sea, which did not include that principle.

167. It was noted that the principle of *uti possidetis juris* was not helpful or relevant within the context of the topic. It was argued that *uti possidetis juris* implied a different dynamic, where factual realities were not affected by the change in the broader legal framework, while the present topic sought to ensure consistency of the legal framework despite radical factual changes. Furthermore, some members emphasized that the application of *uti possidetis juris* required a critical date. According to one view, such a date was difficult to determine for a gradual process such as sea-level rise. Several members observed that the principle was not applicable to maritime boundaries. Nonetheless, for certain members application of *uti possidetis juris* to maritime delimitations should not be excluded.

168. It was observed that the principle of *uti possidetis juris*, which was linked to the issues of legal stability and security, was intended to prevent a legal vacuum and avoid conflicts between States. In that regard, some members proposed that *uti possidetis juris*, if not directly applicable, could be used as a source of inspiration, as the Study Group had similar objectives. It was emphasized that the principle supported the continuity of pre-existing boundaries.

169. The Co-Chairs were requested to clarify the meaning of paragraph 111 (*b*) of the additional paper, according to which the principle of the intangibility of boundaries, as developed under the principle of *uti possidetis juris*, was considered a general principle of law beyond application to the traditional decolonization process and was a rule of customary international law. It was argued that those observations were not supported by international case law. The Co-Chair (Ms. Oral) responded that the point was not the applicability of the principle of *uti possidetis juris* to maritime boundaries in the context of sea-level rise, but the example of the preservation of existing boundaries under international law for the purposes of legal stability and the prevention of conflict.

(iv) Self-determination

170. The importance of the principle of self-determination was recalled in the present context. It was noted that self-determination was closely linked to sovereignty over natural

resources and the territorial integrity of States. With regard to the latter, it was observed that the principle of self-determination implied that States should not lose their right to territorial integrity as a result of sea-level rise. The Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) observed that the principle of self-determination was relevant to all three subtopics under consideration and that it would be addressed by the Study Group during the next session of the Commission, to be held in 2024.

(c) Fundamental change of circumstances (*rebus sic stantibus*)

171. At the third meeting of the Study Group, held on 1 May 2023, the Co-Chair (Ms. Oral) introduced chapter IV of the additional paper, on fundamental change of circumstances (*rebus sic stantibus*). She recalled that the question as to whether sea-level rise would constitute an unforeseen change of circumstances within the meaning of article 62, paragraph 2, of the Vienna Convention on the Law of Treaties had been addressed in the first issues paper,[288] and in the presentation on the practice of African States given by the Co-Chair (Mr. Cissé) during the Commission's seventy-second session (2021).[289] Both had reflected the view that the cited provision could not be applied in the context of sea-level rise. In the course of their discussion in 2021, members of the Study Group had nonetheless concluded that additional study should be undertaken on the issue. Furthermore, a number of delegations in the Sixth Committee had shared the view expressed by the Co-Chairs in the first issues paper, underlining the need for legal stability, and no delegations had conveyed that they were in favour of the application of article 62, paragraph 2, of the Vienna Convention on the Law of Treaties in the context of sea-level rise, although one delegation had indicated that it was still considering the matter. The Co-Chair also recalled that article 62, paragraph 1, of that Convention established a high threshold for invoking fundamental change of circumstances, and that it was thus noted in the preliminary observations, in paragraph 125 (*d*) of the additional paper, that the objective of preserving the stability of boundaries and peaceful relations under article 62 would equally apply to maritime boundaries, as underlined by the International Court of Justice and arbitral tribunals in three cases addressing the issue.[290]

172. Members of the Study Group generally expressed support for the Co-Chairs' preliminary observations, considering that the principle of fundamental change of circumstances 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 on the Law of Treaties. It was noted that the principles of legal stability and certainty of treaties would accordingly support an argument against the use of the principle *rebus sic stantibus* to upset the maritime boundary treaties resulting from the rise in sea levels. It was further noted that the principle was difficult to invoke successfully in practice.

173. The following additional points were raised by individual members:

(a) It would be useful to clarify what should be considered as a cut-off date on which baselines and outer limits of maritime zones had been fixed, as it was unrealistic to decide on uniform dates for all States. In paragraph 104 (*e*) and (*f*) of the first issues paper, reference was made to the moment of deposit of coordinates or charts with the Secretary-General, which would, however, disadvantage those States that had not made such deposits;

(b) There was a difference in international case law between the delimitation and the delineation of maritime zones. Delimitation applied where States with adjacent or

[288] A/CN.4/740 and Corr.1, paras. 113–141. See also *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), para. 281.

[289] *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), para. 261 (*b*).

[290] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 3, at pp. 35–36, para. 85; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Case No. 2010-16, Permanent Court of Arbitration, Award, 7 July 2014, p. 63, paras. 216–217 (available from www.pca-cpa.org/en/cases/18); and *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment, I.C.J. Reports 2021*, p. 206, at p. 263, para. 158.

opposite coasts had overlapping maritime claims, and, unlike delineation, was covered by an agreement. As such, delimitation agreements were governed by the law of treaties;

(c) There was a need to study a number – albeit limited – of specific cases that might constitute a fundamental change of circumstances, such as when two States merge into a single State or when a decision is taken to reduce the maritime space of a State applying ambulatory baselines;

(d) Similarly, it might be helpful to consider whether and to what extent article 62 of the Vienna Convention on the Law of Treaties might apply in the case of treaties establishing provisional boundaries, as opposed to permanent boundaries, or treaties simultaneously establishing maritime boundaries and regimes for the shared exploitation of resources;

(e) Further study could be conducted on the requirements to be fulfilled in order to invoke fundamental change of circumstances as grounds for terminating or withdrawing from a treaty where such a possibility had not been foreseen, and on the extent to which the impossibility of performance might be invoked within the context of sea-level rise.

(d) Effects of the potential situation whereby overlapping areas of the exclusive economic zones of opposite coastal States, delimited by bilateral agreement, no longer overlap, and the issue of objective regimes; effects of the situation whereby an agreed land boundary terminus ends up being located out at sea; judgment of the International Court of Justice in the *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* case

174. At the fourth meeting of the Study Group, held on 2 May 2023, the Co-Chair (Mr. Aurescu) introduced chapter V of the additional paper, including preliminary observations in paragraph 147, on the following: effects of the potential situation whereby overlapping areas of the exclusive economic zones of opposite coastal States, delimited by bilateral agreement, no longer overlapped, and the issue of objective regimes; effects of the situation whereby an agreed land boundary terminus ended up being located out at sea; and the judgment of the International Court of Justice in the *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* case.[291] He emphasized that the issues addressed in the chapter had been selected on the basis of suggestions made by members of the Study Group in 2021. The Co-Chairs had explored, *inter alia*, the supervening impossibility of performance, obsolescence, objective regimes, and situations of submerged land boundaries, and had described relevant State practice and case law on those issues.

175. Some members agreed with the Co-Chairs' preliminary observations in paragraph 147 of the additional paper.

176. A view was expressed that maritime delimitation treaties took varying approaches to respond to potential physical changes in the basepoints and baselines used. While some treaties contained a mechanism to readjust the boundary, most were silent on that and the broader issue of legal stability and did not include amendment provisions. Moreover, there had been revisions of baselines without any readjustment of the boundary.

177. In line with the findings of the additional paper, some members were doubtful as to the relevance and applicability of the supervening impossibility of performing a treaty, as enshrined in article 61 of the Vienna Convention on the Law of Treaties, to the sea-level rise context. It was noted, as also mentioned in the additional paper, that article 61 was not automatically applied, and that sea-level rise could not have an effect on the performance of a maritime delimitation treaty. An abstract examination of that rule was seen as not helpful to the work of the Study Group. According to one view, the only practical scenario in which the impossibility of performance could arise was where a treaty established additional legal

[291] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139.

regimes together with maritime delimitation. However, even in that case, article 62 of the Convention would be more appropriate.

178. A question was raised as to whether legal regimes could be regarded "an object indispensable for the execution of the treaty", as referred to in article 61 of the Vienna Convention on the Law of Treaties. Members expressed diverging views on that question. It was recalled that the International Court of Justice had avoided pronouncing on the question in the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* case.[292] At the same time, it was noted that article 61 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations could be construed as allowing for a legal regime to be considered an object indispensable for the execution of the treaty.[293] Given the lack of clarity in international law in that respect, it was proposed that the Study Group should not focus its work on the question of the applicability of article 61 of the Vienna Convention on the Law of Treaties.

179. With respect to cases in which an agreed land boundary terminus ended up being located out at sea, it was observed that two legal options existed: to recognize, as a legal fiction, that the land boundary remained; or to conclude that it had become a maritime boundary. With respect to the latter case, it was recalled that article 15 of the United Nations Convention on the Law of the Sea provided that the delimitation of the territorial sea between States with opposite or adjacent coasts should be done on the basis of the median line. However, the submerged land boundary would not always coincide with the median line, and such a case would require an interpretation of article 15 to allow a special circumstance to be taken into account. It was also noted that the method of using fixed points at sea could be applied in such cases for maritime delimitation between States with adjacent coasts.

180. With respect to the issue of objective regimes, it was noted that maritime delimitation agreements should not be considered as imposing any objective regime *vis-à-vis* third States. It was proposed that the issue be approached from the perspective of the legal effects of acquiescence. It was also noted that articles 11 and 12 of the 1978 Vienna Convention on the Succession of States in respect of Treaties, as referred to in paragraph 141 of the additional paper, were not applicable in the context of sea-level rise.[294]

181. In line with the additional paper, the question of obsolescence, or desuetude, of treaties was seen as highly controversial and hardly helpful in the context of sea-level rise. It was proposed that the Study Group should not focus on it.

182. Some members agreed on the relevance of the *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* case of the International Court of Justice in the sea-level rise context.[295] However, it was noted that the conclusions reached by the Court in that case could not be generally applied in all situations. It was also emphasized that the Court had never held that baselines should be fixed. A view was expressed that the statement of Costa Rica, cited in paragraph 146 of the additional paper, in which that State noted that legal stability did not necessarily require a fixed delimitation line and could also be achieved with a moving delimitation line, introduced too much complexity and should be taken with caution.

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[292] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, at p. 63, para. 103.

[293] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 21 March 1986, not yet in force), *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Documents of the Conference)*, vol. II, document A/CONF.129/15 (reproduced in A/CONF.129/16/Add.1 (Vol. II)).

[294] Vienna Convention on Succession of States in respect of Treaties (Vienna, 23 August 1978), United Nations, Treaty Series, vol. 1946, No. 33356, p. 3.

[295] *Maritime Delimitation in the Caribbean Sea and in the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)* (see footnote 291 above).

(e) Principle that "the land dominates the sea"

183. At the fourth meeting of the Study Group, held on 2 May 2023, the Co-Chair (Ms. Oral) introduced chapter VI of the additional paper, including preliminary observations in paragraph 155, on the principle that "the land dominates the sea". She explained that it had been the Co-Chairs' intention not to reconsider the principle, but rather to highlight the fact that it was a judicially established principle that was broadly applied, and to examine it in the context of sea-level rise further to a mapping exercise of the relevant practice and case law. She stressed that the Co-Chairs had specifically aimed to consider whether the principle was an absolute rule, and whether it could be applicable in cases where portions of land had become submerged. She presented the principle of natural prolongation, a codified rule that, for practical reasons, had fallen into disuse by the International Court of Justice and arbitral tribunals, and the principle of the permanency of the outer boundaries of the continental shelf, under article 76 of the United Nations Convention on the Law of the Sea. Both of those principles had been cited by the Co-Chairs as examples of exceptions to the application of the rule that "the land dominates the sea".

184. In the course of their exchange, members expressed diverging views on the nature and status of the concept in international law. Some members of the Study Group noted that "the land dominates the sea" was neither a principle nor a rule of customary international law. Another view was expressed that it was a question not of contemplating exceptions to the principle that "the land dominates the sea", but of establishing solid support for the preliminary observations in favour of preservation and permanency of baselines and maritime boundaries.

185. Some members considered that "the land dominates the sea" was rather a legal maxim developed in international case law and that, while rights over maritime spaces depended on the sovereignty over the coastline, "the land dominates the sea" was not a rule that could be used in practice to determine maritime zones. A view was expressed that, with the exception of historic title and rights, every privilege enjoyed by States in the form of maritime spaces under their jurisdiction was based on their sovereignty over the coastline. There was, however, no overarching principle that made it possible for States to determine, in accordance with the traditional sources of international law, another rationale for the granting of privileges over the sea. Rather, maritime entitlements were determined on the basis of the baselines rule, on which, it was thus suggested, the Study Group should therefore focus. It was also recalled that the outer limits of the continental shelf remained fixed despite the landward shift of baselines, which showed that the principle that "the land dominates the sea" was not universal.

186. According to another view, the principle that "the land dominates the sea" was a long-existing principle of international law, stemming from the cannon-shot rule, and was used in practice for maritime delimitation. It was also noted that the principle was a rule of customary international law and was reflected in various international instruments, including the United Nations Convention on the Law of the Sea. At the same time, the necessity for consistent treatment of changes in coastlines and changes in maritime features was stressed.

187. It was emphasized that maritime spaces existed in direct relation to the land and that it would be helpful to reconsider the matter in the context of the subtopic on statehood.

188. It was suggested that the Study Group explore further the issue of basepoints, which were also used for maritime delimitation, to consider, in particular, whether basepoints could be fixed, similarly to baselines. In that regard, a call was made for States, in particular those facing the threat of sea-level rise, to publish their basepoints.

(f) Historic waters, title and rights

189. At the fifth meeting of the Study Group, held on 3 May 2023, the Co-Chair (Ms. Oral) introduced chapter VII of the additional paper, including preliminary observations in paragraphs 168 and 169, on historic waters, title and rights. She noted that the chapter explored the history of the development of the principle, its application by States and international courts and tribunals, and its possible applicability in the context of sea-level rise for the purposes of preserving existing rights in maritime areas.

190. Some members noted the exceptional nature of the principle of historic waters, title and rights. Several members called for caution in examining the applicability of the principle in the context of sea-level rise. A view was expressed that the content of the principle was ambiguous. It was also emphasized that international law did not provide for a single regime for historic waters, title or rights, but provided only for a particular regime for each individual case. Furthermore, it was recalled that the International Court of Justice, in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case in 2012, had pronounced that historic considerations did not create legal rights *per se*, but had primarily evidentiary value in confirming that the disputed territory belonged to a specific State.[296]

191. It was recalled that the establishment of a historic regime was conditioned on several requirements, including the need to exercise effective authority over a region. The requirement of effective authority, beyond mere legal pronouncements, was seen as potentially problematic for small island and archipelagic States, as it required considerable financial and technical resources.

192. It was noted that the principle of historic waters, title and rights would be relevant if an ambulatory baselines approach were adopted. Some members expressed reservations as to the applicability of the principle in the context of sea-level rise. In particular, a concern was expressed that the universal nature of sea-level rise would render all existing maritime titles historic. At the same time, it was noted that the principle could be useful in situations of submerged land boundaries.

193. A view was expressed that the Co-Chairs should refrain from citing the *South China Sea Arbitration* award as it exceeded the scope of the United Nations Convention on the Law of the Sea and the award had been criticized.[297] A contrary view was expressed, recalling that the South China Sea was a sensitive area.

194. The Co-Chair (Ms. Oral) noted that the principle of historic waters, title and rights had led to an exceptional regime of limited application, which, by its nature, would be considered on a case-by-case basis rather than as a general rule applicable to sea-level rise, and was relevant only if baselines were accepted as ambulatory. Moreover, she stressed that, in her opinion, the principle was relevant to the present study as it provided an example of the preservation of existing rights in maritime areas that would otherwise not be in accordance with international law.

(g) Equity

195. At the fifth meeting of the Study Group, held on 3 May 2023, the Co-Chair (Ms. Oral) introduced chapter VIII of the additional paper, including preliminary observations in paragraph 183, on the question of equity. She noted that the request for the Study Group to examine the issue of equity had been made by several States, including small island and small island developing States. While equity was a broad concept of international law, the Co-Chairs had focused in the chapter on the issue of equity first in general and then in the context of the law of the sea and sea-level rise. She recalled that certain examples of case law and State practice had been reflected in the chapter.

196. It was noted that equity was an important principle that was enshrined in various international conventions and instruments, including the United Nations Convention on the Law of the Sea. It was recalled that those who stood to suffer the most from human-induced sea-level rise had contributed the least to the problem, and the preservation of baselines and maritime entitlements gave expression not only to the foundational principles of equity and legal stability, but also to notions of climate justice that were deeply rooted in human rights and general principles of international law. The link between the principle of equity and the principle of common but differentiated responsibilities was also mentioned by several members. It was noted that the latter principle, established in international law, was relevant to the obligations of all States to address climate change and its effects, including sea-level rise, and could prove useful in addressing the impact of sea-level rise through mitigation and

[296] *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 624.

[297] *South China Sea Arbitration between the Philippines and the People's Republic of China*, Case No. 2013-19, Permanent Court of Arbitration, Award, 12 July 2016.

adaptation measures, especially in developing States. Furthermore, it was noted that legal stability and equity should be the guiding principles of the Study Group's work on rising sea levels, given that equity was at the heart of the object and purpose of the United Nations Convention on the Law of the Sea itself. A view was expressed that equity required that the special needs and interests of developing States, especially those vulnerable to climate change, be fully taken into account. A view was also expressed that the Study Group should conduct further research into the legal question of the application of the principle of equity to sea-level rise in the context of climate change.

197. A question was raised as to whether equity could be considered a rule of customary international law or a general principle of law. It was noted that equity as a source had been specifically excluded from article 38 of the Statute of the Permanent Court of International Justice, which had been transposed *verbatim* to the Statute of the International Court of Justice. Furthermore, since there was no single position among States on the legal character of equity, it was considered premature at the present stage to pronounce on whether equity was a source of international law within the meaning of Article 38 of the Statute of the International Court of Justice. According to another view, equity could be considered a general principle of law. It was recalled that the principle of equity had been referred to by the Commission in some of its previous work and had been reflected in international instruments. A question was also raised as to whether equity could be considered part of subsidiary means for the determination of rules of international law.

198. Some members recalled that equity was a broad concept, and stressed that particular care was needed in its application to the context of sea-level rise. It was noted that equity was a complex legal concept with various permutations, and that the interpretation of equity by the International Court of Justice in maritime delimitation cases was different from the concept of equity in general that was being discussed by the Study Group. Relatedly, one view was that the additional paper seemed to conflate the distinction between equity as a substantive rule and as a procedural ability of the Court in deciding specific cases. It was recalled that the Court had never resolved a case *ex aequo et bono* and suggested that the Study Group should likewise avoid that concept. A proposal was made for the Study Group to adopt a definition of equity for the purposes of its work on the topic. Some members disagreed with the idea that equity allowed a deviation from positive law.

199. A view was expressed that the concept of equity introduced a teleological dimension to the choice and implementation of applicable rules. It was noted that the notion of equitable results was universally present in the United Nations Convention on the Law of the Sea and that it was possible to consider equity as a legitimizing factor that would support, for example, the notion of fixed baselines. It was recalled that the Convention exempted developing States from certain obligations on account of equity. At the same time, it was emphasized that the notion of equitable results could not be used for all areas of international law. It was suggested that equity should be seen as the ultimate goal to be achieved, rather than a principle to be relied upon. It was also noted that the concept of equity in the context of sea-level rise meant that any solution to address the impact of sea-level rise on maritime entitlements ought to apply to all States, including the most vulnerable ones.

200. A view was expressed that the methodology for maritime delimitation, and in particular the role of equity in it, as described in the additional paper, was not necessarily up to date with international case law. The need for clarity with regard to the rules of maritime delimitation was therefore emphasized.

201. Some support was voiced for the Co-Chairs' preliminary observation that equity, as a method under international law for achieving justice, should be applied in favour of the preservation of existing maritime entitlements. In particular, a view was expressed that the legal stability principle invoked by States as a justification for the fixed baselines approach was supported by the application of equity. According to another view, while equity might strengthen the legal argument in favour of the solution of fixing baselines, the legal vagueness of the concept of equity meant that the fixed baselines approach should not at the present stage be seen as the only possible or preferable solution. It was emphasized that equity in some cases could contribute to legal instability.

202. Some members expressed reservations about the applicability of equity in the context of sea-level rise. It was noted that the preliminary observations contained the assumption that any loss of maritime entitlement would be inherently inequitable. A question was raised as to whether that would always be the case. In particular, doubt was expressed as to whether the landward shift of exclusive economic zones without change to their size could be considered inequitable. In that regard, it was noted that equity could work against the objective of the Study Group, namely that of ensuring the legal stability of the system in the light of the changing realities resulting from sea-level rise.

203. The Co-Chairs (Mr. Aurescu and Ms. Oral) recalled that the intention of the chapter was to map various issues related to equity and explore the applicability of the concept to the context of sea-level rise. The Co-Chairs expressed concern that the views of the Study Group could be interpreted as being against equity, and emphasized the need to reach a conclusion on how equity could be helpful in the context of sea-level rise.

(h) Permanent sovereignty over natural resources

204. At the sixth meeting of the Study Group, held on 4 May 2023, the Co-Chair (Ms. Oral) introduced chapter IX of the additional paper, including preliminary observations in paragraphs 192 to 194, on the principle of permanent sovereignty over natural resources. She recalled that members had raised the need for the Study Group to address the principle in greater detail. The chapter explored the development and scope of the principle of permanent sovereignty over natural resources, as reflected in relevant international instruments and the doctrine, and its application to marine resources. The Co-Chair also observed that the principle was widely recognized as a principle of customary international law.

205. Some members considered the principle of permanent sovereignty over natural resources to be relevant to the topic under consideration. Members agreed that it was a principle of customary international law, as outlined in the additional paper. It was recalled that, on 11 December 1970, the General Assembly had adopted resolution 2692 (XXV), entitled “Permanent sovereignty over natural resources of developing countries and expansion of domestic sources of accumulation for economic development”, whereby it recognized that the principle of permanent sovereignty over natural resources was applicable to marine natural resources. A doubt was expressed as to whether the loss by a State of its maritime entitlements outside of its own volition could be considered a violation of the inalienable rights, as recognized by other States, that were inherent in its sovereignty.

206. A view was expressed that a distinction should be drawn between natural resources in the seabed and subsoil and those in the water column. It was also noted that the principle of permanent sovereignty over natural resources had a special historical meaning and that the question of its applicability outside the colonial context was not yet settled.

207. Several members underlined the link between the principle of permanent sovereignty over natural resources and the right of peoples to self-determination. In that regard, it was recalled that examination of the principle of permanent sovereignty over natural resources could continue the following year, when the Study Group would return to the subtopics of statehood and the protection of persons affected by sea-level rise. The link between the principle of permanent sovereignty over natural resources and the presumption of continuity of statehood, as addressed in the subtopic of statehood, was also noted.

208. Support was expressed for the preliminary observations in paragraph 194 of the additional paper. At the same time, several members expressed doubt that the principle of permanent sovereignty over natural resources necessarily supported the observations in paragraph 194 (b), concerning the loss of marine natural resources. A view was expressed that the principle would not in itself be sufficient to override the change of maritime entitlements caused by changes to the coast. Another view was expressed that the principle of permanent sovereignty over natural resources was agnostic about the existence and spatial scope of sovereign rights and jurisdiction over maritime spaces, and instead identified the manner in which they could be exercised.

209. The Co-Chair (Ms. Oral) welcomed the rich discussion between the members of the Study Group on chapter IX of the additional paper. She emphasized that while the principle of permanent sovereignty over natural resources was linked to the decolonization process, it

continued to play an important part in economic development for many developing States. The Co-Chair noted that the principle was relevant in the context of sea-level rise, as it provided for additional layers of support for the concept of the preservation of maritime entitlements.

(i) Possible loss or gain by third States

210. At the sixth meeting of the Study Group, held on 4 May 2023, the Co-Chair (Ms. Oral) introduced chapter X of the additional paper, including preliminary observations in paragraph 214, on possible loss or gain by third States. She noted that the question of the possible legal effects of sea-level rise on the exercise of sovereign rights and jurisdiction of coastal States and third States had been addressed in the first issues paper.[298] She recalled that, during the seventy-second session (2021) of the Commission, the Study Group had decided that there was a need to explore the question further, in particular from the perspective of third States, which prompted the inclusion of the matter in the additional paper. The chapter thus explored different scenarios, triggered by baselines shifting landward, and their effect on the possible benefits and losses to third States, concluding that the preservation of existing baselines and maritime boundaries would not result in any loss to either party.

211. The Co-Chairs were commended for the clear and analytical discussion of possible loss or gain by third States. A view was expressed that the legal issues arising from scenarios addressed in the additional paper could occur only where there was no prior maritime delimitation agreement between States, and the question of practical relevance, given the limited number of scenarios in which the legal issues could occur, was therefore raised. It was further noted that the legal consequences of sea-level rise for existing delimitation treaties were of particular importance, in terms of their influence on third States specifically. In that regard, a proposal was made for the Study Group to explore available options for third States that could have an interest in the termination, owing to the effects of sea-level rise, of existing delimitation treaties to which they were not parties.

212. A view was expressed that sea-level rise, in the context of ambulatory baselines, would not disturb the balance established by the United Nations Convention on the Law of the Sea, as maritime zones would move landward, but their size would remain unchanged and loss by States would be limited to land territory. It was nonetheless observed that the fixed baselines approach, if adopted, would undoubtedly affect the rights of third States, and would also lead to significant changes in the rules governing the law of the sea. A concern was raised that the increase in portions of waters under the sovereignty of coastal States would have a considerable effect on the right of innocent passage for third States. At the same time, it was noted that the fixed baselines approach was indispensable to maintaining the predictability of maritime entitlements and preserving the balance of rights and obligations established by the Convention. A view was also expressed that, in addition to fixing baselines, the existing defined outer limits of maritime zones must be preserved in order to maintain the *status quo* of maritime entitlements as established in accordance with international law.

213. With regard to paragraph 199 of the additional paper, a point was made suggesting that there were different positions in international law as to whether the right of innocent passage applied to both merchant and military vessels.

214. The Co-Chair (Ms. Oral) emphasized the link between the matter under consideration and the principle of equity, discussed in chapter VIII of the additional paper.

(j) Nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation

215. At the sixth meeting of the Study Group, held on 4 May 2023, the Co-Chair (Ms. Oral) recalled that the issue of navigational charts had been raised during the Study Group discussions during the seventy-second session (2021) of the Commission.[299] She noted that

[298] A/CN.4/740 and Corr.1, paras. 172–190.

[299] *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), paras. 247–296.

the purpose of chapter XI of the additional paper was to examine in greater detail the various functions of navigational charts under international law and to determine whether States had an obligation to update such charts periodically under the United Nations Convention on the Law of the Sea. She also brought to the attention of the Study Group that the Co-Chairs had prepared the chapter on the basis, *inter alia*, of information from States and international organizations, in particular the International Hydrographic Organization, the International Maritime Organization and the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs.

216. Referring to the preliminary conclusions in paragraphs 245–249 of the additional paper, the Co-Chair emphasized that nautical charts were principally used for the purposes of the safety of navigation, and that the depiction of baselines or maritime zones was a supplementary function. The Co-Chair also observed that there was no evidence in practice or in sources of international law of an obligation on States to regularly update their nautical charts, particularly so since many States lacked the necessary capacity to conduct regular hydrographic surveys.

217. With regard to the purpose of the nautical charts under international law, several members recalled that such charts were predominantly used for the safety of navigation and that the maritime boundaries delimitation was a concern that was secondary in nature. Other members questioned whether the Study Group could conclude that the safety of navigation was the primary function of the navigation charts. The need to distinguish between nautical charts used for seafaring purposes and those used for recording maritime zones was emphasized.

218. Members expressed agreement that there was no obligation for States under the United Nations Convention on the Law of the Sea to update nautical charts, once duly deposited with the Secretary-General, for the purposes of depicting basepoints, baselines or maritime boundaries. Several members noted that there was also insufficient State practice to support the existence of such an obligation. It was also recalled that some States had difficulties in preparing charts as they did not have dedicated hydrographic agencies. It was further stressed that the need for legal stability should not have any effect on the question of updating navigational charts. A question was raised as to whether it would be beneficial to encourage States to register their nautical charts, and to provide technical assistance to that end. A concern was raised that the fixed baselines approach together with the lack of an obligation to update baselines could pose hazards to the safety of navigation as charts might not reflect physical reality, potentially in contravention of the relevant international instruments, in particular the International Convention for the Safety of Life at Sea.[300]

219. The Co-Chair (Ms. Oral) reiterated that the purpose of the chapter was to examine the role of navigational charts and, specifically, whether there was an obligation for States to update them. She recognized that the issue was linked to the debate on fixed versus ambulatory baselines and noted that the preliminary observations in paragraph 214 of the issues paper – in chapter X, on possible loss or gain by third States – did not contravene the fixed baseline approach.

(k) Relevance of other sources of law

220. At the seventh meeting of the Study Group, held on 4 May 2023, the Co-Chair (Mr. Aurescu) introduced chapter XII of the additional paper, on the relevance of other sources of law. He recalled that the members of the Study Group had suggested at the seventy-second session (2021) of the Commission that the Co-Chairs explore sources beyond the United Nations Convention on the Law of the Sea and the 1958 Geneva Conventions.[301] The chapter therefore listed a number of potentially relevant international instruments. The

[300] International Convention for the Safety of Life at Sea, 1974 (London, 1 November 1974), United Nations, *Treaty Series*, vol. 1184, No. 18961, p. 2.

[301] Convention on the High Seas (Geneva, 29 April 1958), United Nations, *Treaty Series*, vol. 450, No. 6465, p. 11; Convention on the Continental Shelf (Geneva, 29 April 1958), *ibid.*, vol. 499, No. 7302, p. 311; Convention on the Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958), *ibid.*, vol. 516, No. 7477, p. 205; and Convention on Fishing and Conservation of the Living Resources of the High Seas (Geneva, 29 April 1958), *ibid.*, vol. 559, No. 8164, p. 285.

preliminary observations, reflected in paragraph 280, were that their relevance to the topic was limited, although the fixed baselines solution would favour the proper implementation of some of the international instruments examined.

221. Some members agreed with the preliminary observations of the additional paper as to the limited usefulness of exploring other sources of law. It was noted that a large number of multilateral and bilateral international instruments referred to various maritime zones, and that it was practically unfeasible for the Study Group to exhaustively explore the matter. The central role of the United Nations Convention on the Law of the Sea was thus emphasized.

3. Future work of the Study Group

222. Members made various suggestions and outlined several options during their exchange of views concerning the working methods of the Study Group and future work on the topic.

223. First, it was underlined that a clearer road map was required to meet the expectations of States, including in determining the form and content of the Study Group's final report, expected to be issued in 2025, and the outcomes to be delivered. The prioritization of issues that the Commission was in a position to address was also recommended.

224. Second, some members suggested that the Study Group proceed to an operative phase and propose concrete solutions to practical problems caused by sea-level rise. It was accordingly suggested that the Study Group should contemplate providing some practical guidance to States, possibly through a set of conclusions.

225. Third, several members were in favour of preparing an interpretative declaration on the United Nations Convention on the Law of the Sea, which could serve as a basis for future negotiations between States parties. In that connection, reference was made to the precedent of the fourth Review Conference (1996) of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.[302] At the same time, it was stressed that the interpretation of treaties, including the United Nations Convention on the Law of the Sea, fell within the purview of States parties and the instrument's bodies. A view was expressed that in the light of inadequate State practice and insufficient scientific evidence, there was no need to reinterpret the existing regime on the United Nations Convention on the Law of the Sea. Another view was expressed that an interpretative declaration would not serve as a sufficient guarantee to the affected States in the future.

226. Fourth, the Co-Chairs stressed the importance of further exploring the issue of submerged territories, which had not been raised in 2021. Given that the issue was related both to the law of the sea and to statehood, they suggested that it be addressed in the Study Group's additional paper to the second issues paper, expected to be issued in 2024, and in the consolidated final report, expected to be issued in 2025.

227. With regard to the outcome of the Study Group's work, various proposals were made, including a draft framework convention on issues related to sea-level rise that could be used as a basis for further negotiations within the United Nations system, following the example of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.[303]

228. More generally, it was also suggested that any outcome of the Commission's work on the topic should guarantee the sovereign rights of States over their maritime spaces. It was recalled that, while the Commission's mandate allowed for promotion of the progressive development of international law, its work ought to be rooted within the existing international rules.

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[302] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (London, Moscow and Washington, 10 April 1972), United Nations, *Treaty Series*, vol. 1015, No. 14860, p. 163.

[303] United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 14 October 1994), United Nations, *Treaty Series*, vol. 1954, No. 33480, p. 3.

229. In the light of recent requests for advisory opinions addressed first to the International Tribunal for the Law of the Sea and then to the International Court of Justice, a view was expressed that the Study Group should exercise caution in considering issues addressed by other bodies.

230. In 2024, the Study Group will revert to the subtopics of statehood and the protection of persons affected by sea-level rise. In 2025, the Study Group will then seek to finalize a substantive report on the topic as a whole by consolidating the results of the work undertaken.