Translated from Spanish

Permanent Mission of Colombia to the United Nations

30 June 2022

Comments by the Republic of Colombia with regard to the report of the International Law Commission on the work of its seventy-second session (A/76/10), on the topic of sea-level rise in relation to international law, submitted pursuant to General Assembly resolution 76/111 of 9 December 2021

Pursuant to resolution 76/111 of 9 December 2021, in which the General Assembly drew the attention of Governments to the importance for the International Law Commission of having their views on all the specific issues identified in chapter III of the report of the Commission on the work of its seventy-second session (2021), which the Secretary-General circulated to Governments so that they could submit their comments and observations by 30 June 2022, including on the topic "Sea-level rise in relation to international law", the Republic of Colombia has the honour to submit the comments below.

A. General comments

Sea-level rise resulting from climate change is an issue that has gained prominence in multilateral forums in recent years because, in addition to the impact on the environment that scientists have warned about, sea-level rise entails significant risks for the configuration of the territory of certain States, the immediate future of some urban centres, the delimitation of maritime spaces and even the survival of some States. Although the scale of the impact is now better understood, thanks to progress in research, this does not mean that the capacity to address it has increased.

The laws of Colombia that govern the baselines of its maritime territories and zones are Act No. 10 of 1978 and Decrees Nos. 1436 of 1984, 1946 of 2013 and 1119 of 2014. Although these laws do not contain explicit or implicit references to sea-level rise, or to climate change and its effects more generally, Colombia has been considering whether it would have to adjust and change its baselines as a result of the changes to the shape of its coast or to some of the geographic formations that today constitute points on these lines or points from which maritime spaces are measured.

B. Specific considerations

In addition to the two reports produced by the International Law Commission, it should be noted that in 2022 the World Bank released its report *Legal Dimensions of Sea Level Rise: Pacific Perspectives*, by David Freestone and Duygu Çiçek – which was prepared on the basis of a 2008 working paper by the Legal Vice Presidency of the Bank – in the context of a resilience- and capacity-building programme to help Pacific island States to address the challenges and risks associated with sea-level rise.

The adoption by the Pacific Islands Forum in August 2021 of the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise,[1] in which the member countries of the Forum state that, in accordance with the United Nations Convention on the Law of the Sea, they do not intend to review the baselines or limits of their maritime zones as notified [at the relevant time] to the Secretary-General, has led other States, including Colombia, to consider this important issue.

Similarly, the March 2022 report of the International Relations and Defence Committee of the House of Lords of the United Kingdom, which is based on the consultations on the relevance of the United Nations Convention on the Law of the Sea in the twenty-first century that the Committee conducted in 2021 and 2022,[2] contains some interesting conclusions. In the report, the Committee indicates that, given that sea levels will continue to rise as a result of climate change, affecting the smallest island countries in particular, the Government of the United Kingdom should take a formal position that baselines should remain fixed. This has given the Government of Colombia new information to consider.

The most recent reports on the issue of sea-level rise resulting from climate change show that the smallest island countries will be the most affected.

In the light of this situation, Colombia will continue to review the issue, in particular because, owing to its geographical location and the configuration of its coastline and island territories, it is among the States that will be the worst affected by climate change and rising sea levels.

The primary legal problem that emerges with respect to the law of the sea is the need to determine the extent to which a State such as Colombia, which is not a party to the United Nations Convention on the Law of the Sea, may be obliged to revise and update its baselines and, consequently, the limits of the maritime zones whose dimensions are measured from those baselines, as a result of sea-level rise caused by climate change. With regard to delimitations agreed upon in bilateral treaties, the relevant provision is article 62 (2) of the Vienna Convention on the Law of

[1] Signed by Australia, the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

2 "UNCLOS: fit for purpose in the 21st century?"; HL Paper 159.

Treaties, which states that "a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary".

It is also important to bear in mind that baselines, although they are of a variable nature insofar as they change in accordance with changes in the coastline and variations in the low-water line, have to be set out on maps, and there is no express obligation to modify or update them.

In the view of Colombia, there would be no legal impediment to updating or revising registered and publicized maps or coordinates, but nor is there a positive obligation to do so. In the same way, there is no obligation to revise, terminate or denounce a treaty on the subject, even when a coastal State has not deposited the relevant maps and information.

All of the above prompts the question: to what extent can a State insist on maintaining its baselines, the points on those lines and the delimitation of the corresponding maritime zones, despite significant changes wrought by sea-level rise? It might be considered that the coastal State in question should take into account the need to update the relevant information (nautical charts) to reflect current conditions in order to ensure, in particular, the safety of navigation for the exercise of the right of innocent passage and for access to inland waters and ports.

It should be noted that sea-level rise does not justify the adoption of baselines on the basis of conditions other than those established in customary international law for determining straight baselines or archipelagic baselines or for delimiting maritime spaces.

With regard to the effects of sea-level rise on islands, the Commission mentions their relevance in cases where islands constitute base points for baselines and archipelagic baselines, and it mentions islands as special circumstances in maritime delimitation, but there are situations, applicable to States such as Colombia, where a geographical formation is also recognized as an island in a judgment or arbitral award for the purposes of the delimitation of maritime spaces but can no longer be considered as such because of sea-level rise. Formations may even disappear, permanently submerged, at a given time.

This is of special relevance for Colombia because the International Court of Justice, in its judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, which was issued in 2012, considered the study of the characteristics and geography of the Alburquerque, East-Southeast, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo cays in order to determine the sovereignty over them and to determine whether they were islands and whether they could be appropriated. In particular, the Court found that Quitasueño was an island because one of its elevations, identified as QS 32, was a low-tide elevation that remained above sea level at high tide.

Colombia is of the view that the Commission should also study the potential consequences of the changes that may result from rising sea levels – as did the House of Lords, for example – including the matter of islands that might be reclassified [as rocks] and therefore lose portions of their maritime space.

In the light of the above, Colombia considers that sea-level rise as a consequence of global warming is an evolving topic; therefore any conclusions reached must be tentative. They will depend very much on the practice that States choose to adopt as the geography of their coastlines changes and will be subject to continuous monitoring and review. In this process, it is important to take into account the United Nations Convention on the Law of the Sea, but also, more broadly, customary law and other law of the sea and environmental law instruments – because of the important link between those two legal regimes – and the bilateral treaties concluded by States in which they set forth relevant actions.