

The rest of the statement, focusing on the substantive chapters, will be presented in accordance with the agreed clusters. Accordingly, it will first address cluster I chapters, namely Chapter IV (general principles of law) and VIII (sea-level rise in relation to international law), then cluster II chapters, which relate to chapters V (settlement of disputes to which international organizations are parties) and VI (prevention and repression of piracy and armed robbery at sea), and finally cluster III chapters, involving Chapters VII (subsidiary means for the determination of rules of international law) and IX (succession of States in respect of State responsibility).

Cluster I: Chapter IV, General principles of law and Chapter VIII, Sea-level rise in relation to international law)

I first draw attention to **chapter IV**, concerning the topic “**General principles of law**”. This topic was included in the programme of work of the Commission in 2018. At the present session, the Commission had no new report of the Special Rapporteur, Marcelo Vázquez-Bermúdez. The Commission adopted draft conclusions 1 to 11, together with commentaries thereto, on first reading. It bears noting that the Drafting Committee had already provisionally adopted the draft conclusions during last year’s session, and only undertook the *toiletage* finale of the entire set of the draft conclusions this year. As is customary upon the completion of first reading, the Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft conclusions, through the Secretary-

Draft conclusion 1 (scope) sets out the general parameters of the draft conclusions. It states succinctly that the draft conclusions concern general principles of law as a source of international law. The term “general principles of law” is used throughout the draft conclusions to refer to “the general principles of law” listed in Article 38, paragraph 1 (c), of the Statute of International Court of Justice, analysed in the light of the practice of States, the jurisprudence of courts and tribunals, and teachings.

Draft conclusion 2 (recognition) reaffirms a basic element of Article 38, paragraph 1 (c), namely, that for a general principle of law to exist, it must be recognized by the community of nations. Draft conclusion 2 employs the term “community of nations” as a substitute for the term “civilized nations” found in Article 38, paragraph 1 (c) because the Commission considered the latter term anachronistic. By employing this formulation, the draft conclusion aims to stress that all nations participate equally, without any kind of distinction, in the formation of general principles of law, in accordance with the principle of sovereign equality set out in Article 2, paragraph 1, of the Charter of the United Nations.

Draft conclusion 3 (categories of general principles of law), deals with the two categories of general principles of law in the sense of Article 38, paragraph 1 (c), namely: (a) those that are derived from national legal systems; and (b) those that may be formed within the international legal system. The term “categories” is employed to indicate two groups of general principles of law in light of their origins and thus the process through which they may emerge. I wish to highlight that the phrase “may be formed”, used to refer to general principles of law within the second category, was considered appropriate to introduce a degree of flexibility to the provision, acknowledging that there is a debate as to whether such a category exists.

Draft conclusion 4 (identification of general principles of law derived from national legal systems) addresses the requirements for identification of the first category. It provides that, to determine the existence and content of a general principle of law, it is necessary to ascertain: (a) the existence of a principle common to the various legal systems of the world; and (b) the transposition of that principle to the international legal system. This two-step analysis is aimed at

Draft conclusion 9 (teachings) addresses the role of teachings in the identification of general principles of law. Again, following closely the language of Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice, it provides that such works may be resorted to as a subsidiary means for determining general principles of law, that is to say, when ascertaining whether there is a principle common to the various legal systems of the world that may be transposed to the international legal system, or whether there is a principle formed within the international legal system.

Draft conclusion 10 (functions of general principles of law) states that general principles are mainly resorted to when other rules of international law do not resolve a particular issue in whole or in part. It also indicates that general principles of law contribute to the coherence of the international legal system, and that they may serve, *inter alia*, to interpret and complement other rules of international law, and as a basis for primary rights and obligations, secondary rules and procedural rules. Draft conclusion 10 applies to all general principles of law, regardless of whether they are derived from national legal systems or formed within the international legal system, depending on the general principle in question.

Lastly, **draft conclusion 11 (relationship between general principles of law and treaties and customary international law)** clarifies certain aspects concerning the relationship between general principles of law, on the one hand, and treaties and customary international law, on the other.

paper on the subtopic of the law of the sea, prepared by Bogdan Aurescu and Nilufer Oral, who also served as Co-Chairs.

The content of the paper was guided by the outcome of the meetings of the Study Group held during the seventy-second (2021) session of the Commission, as well as 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. We also would like to state our appreciation for the contribution by the International Maritime Organization, the International Hydrographical Organization as well as the UN Division for Ocean Affairs and the Law of the Sea, in response to the request 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.

The Study Group had an extensive exchange of views on the additional paper, with a focus on the preliminary observations prepared by the Co-Chairs, addressing in particular the following issues and principles: meaning of “legal stability” in relation to sea-level rise, with attention on baselines and maritime zones; immutability and intangibility of boundaries, including *uti possidetis juris*; fundamental change of circumstances (*rebus sic stantibus*); effects of the potential situation whereby overlapping areas of the exclusive economic zones of opposite coastal States, delimited by bilateral agreement, no longer overlap; effects of the situation whereby an agreed land boundary terminus ends up being located out at sea; principle that “the land dominates the sea”; historic waters, title and rights; equity; permanent sovereignty over natural resources; possible loss or gain of benefits by third States; nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation; and relevance of other sources of law. The summary of discussion on these matters is contained in **paragraphs 135 to 221** of the report.

The Study Group also held a discussion on the future work on the topic.

I wish to recall that the Study Group will revert next year to the subtopics of statehood and the protection of persons affected by sea-level rise last discussed in 2022. 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.

on the topic, including both international disputes and disputes of a private law character. A questionnaire was prepared by the Special Rapporteur for this purpose and communicated to States and international organizations in December 2022. The memorandum by the Secretariat will be before the Commission next year.

At the present session, the Commission had before it the first report (A/CN.4/756) of Special Rapporteur, August Reinisch. The report addressed the scope of the topic and provided an analysis of the subject matter of the topic in light of previous work of the Commission relevant to it and of other international bodies. Two draft guidelines were proposed in the report.

After the debate in Plenary, the Commission decided to refer the two draft guidelines, as proposed, to the Drafting Committee, taking into account the comments and observations made in plenary. Upon consideration of the report of the Drafting Committee (A/CN.4/L.983), the Commission provisionally adopted draft guidelines 1 and 2 and decided to change the title of the topic from “Settlement of international disputes to which international organizations are parties” to “Settlement of disputes to which international organizations are parties”.

The two draft guidelines provisionally adopted by the Commission, together with the commentaries thereto, are reflected in **paragraphs 48 and 49** of the Commission’s report.

Draft guideline 1 (scope) deals with the scope

legal personality” as the paramount characteristic relevant for purposes of dispute settlement, and specifically mentioning the characteristic feature of an international organization possessing “at least one organ capable of expressing a will distinct from that of its members”.

Chapter VI: Prevention and repression of piracy and armed robbery at sea

Mr. Chair,

I shall now turn to **Chapter VI** concerning the topic “**Prevention and repression of piracy and armed robbery at sea**”, which is addressed in **chapter VI** of the report. This topic too was first placed on the programme of work of the Commission last year, with **Yacouba Cissé** appointed Special Rapporteur. This year, the Commission had before it the first report of the

Draft article 2 (definition of piracy) defines piracy. **Paragraph 1** sets out a definition of acts which constitute piracy for the purpose of the draft articles. The definition therein is based on article 101 of the United Nations Convention on the Law of the Sea, article 15 of the 1958 Convention on the High Seas and article 39 of the draft articles concerning the law of the sea, adopted by the Commission in 1956. This definition is regarded as reflecting customary international law and has been reproduced in several regional legal instruments. The Commission felt that the integrity of the definition of piracy contained in article 101 of the Convention should be preserved. This is in line with the objective of the topic, which is not to seek to alter any of the

respect to armed robbery at sea, the coastal State has the exclusive competence to exercise prescriptive and enforcement jurisdiction over such acts.

As for the **future work** of the Commission on this topic, it is the intention of the Special Rapporteur to analyze, in the second report, the regional and subregional practices and initiatives for combating piracy and armed robbery at sea, as well as the resolutions of the General Assembly, the Security Council and relevant international organizations, in particular the International Maritime Organization. To this end, the Commission still considers as relevant the request for information on the topic contained in chapter III of its 2022 report and would welcome any additional information, by 1 December 2023. This request is reiterated in chapter III of this year's report.

Cluster III: *Chapters VII, Subsidiary means for the determination of rules of international law, and Chapter IX, Succession of States in respect of State responsibility*

Chapter VII: Subsidiary means for the determination of rules of international law

Mr. Chair,

I turn to the final cluster of chapters, starting with the topic “**Subsidiary means for the determination of rules of international law**”, addressed in **chapter VII** of the report.

The Commission commenced this year the substantive consideration of this topic, which concerns the study of the materials mentioned in Article 38 (1)(d) of the Statute of the International Court of Justice. The Commission had before it the first report (A/CN.4/760) of Special Rapporteur, Charles Jalloh, as well as a memorandum prepared by the Secretariat, identifying elements in the previous work of the Commission that could be particularly relevant to the topic (A/CN.4/759). The first report of the Special Rapporteur addressed the scope of the topic and the main issues to be addressed in the course of the work of the Commission. The report also considered the views of States on the topic, questions of methodology, the previous work of the Commission on the topic, the nature and function of sources of international law and their

relationship to the subsidiary means; and the drafting history of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice and its status under customary international law. The Special Rapporteur addressed the outcome of the work and, consistent with the related prior work of the Commission, proposed draft conclusions as the final form of output. Five draft conclusions were proposed in the report (**draft conclusions 1 to 5**).

the Commission in the topics on the Identification of Customary International Law and on General Principles of Law. Subparagraph (c) refers to a third category of other means used generally in practice to assist in the determination of the rules of international law.

Draft conclusion 3 (general criteria for the assessment of subsidiary means for the determination of rules of international law) is based on the premise that various forms of subsidiary means will have different weight or value depending on the context. The list of criteria is intended to provide guidance in the assessment of the weight to be given to such material and includes the degree of representativeness, the quality of the material, the expertise of those involved and their level of agreement, the reception of the material by States and other entities and a consideration on the mandate given to the respective body.

During the next session, the Special Rapporteur will present a second report focusing on the decisions of international courts and tribunals and elaborating on the use of subsidiary means for the determination of rules of international law. The Commission will also have before it a memorandum prepared by the Secretariat surveying the case law of international courts, tribunals, and other bodies, which was requested by the Commission in 2022.

I wish to recall that, also last year, the Commission requested States and international organizations for information that could be relevant for the study of the topic, including practice at the domestic level that draw upon judicial decisions and the teachings of the most highly qualified publicists in the process of determination of rules of international law, and statements made in international organizations, international conferences and other forums, including pleadings before international courts and tribunals, concerning subsidiary means for the determination of rules of international law. This year the Commission has renewed such request in **paragraph 26** of the report, and would welcome any information on the subject.

Chapter IX: Succession of States in respect of State responsibility

Mr. Chair,

The last substantive chapter, which is **chapter IX**, concerns the topic

This year, the Commission had no report before it on the topic. As Special Rapporteur, Pavel Šturma,

look to international law as a beacon of light and together ensure we preserve the integrity and viability of international law within the multilateral system. It is with this sense of responsibility that the Commission undertakes its work. And in this new quinquennium, with over half of the Members of the Commission newly elected, we all shared the same sense of responsibility.

The Commission looks to the Sixth Committee for valuable comments on its work, so as to make it more useful and relevant to the needs of Member States. The interaction that the Commission has with the Sixth Committee during the debate on the annual report, during the interactive dialogue, as well as the written comments received, provides a useful framework for enriching the work product of the Commission. During the coming days, we look forward to hearing comments and observations from you all, and to a useful exchange of views. The Commission also looks to the Sixth Committee to effect the necessary changes that we all desire to assure, in particular, gender representation in our Commission.

Before concluding, we take this opportunity to express once again the deep appreciation of the Commission for the important support of the Secretariat – our common Secretariat - to the work of the Commission.

This concludes the presentation of the entire report and we thank you very much for your kind attention.

Thank you.