Mr. Chair,

Distinguished representatives of the Member States,

Dear colleagues,

I am deeply honoured to be able to take the floor today, before you, even if by videoconference, in my capacity of co-chair of the Study Group of the International Law Commission on the topic "Sea-level rise in relation to international law". I am accompanied by my colleague and co-chair Ms Nilufer Oral, who will continue after the presentation of my intervention.

As you well know, this topic was included in the long-term programme of the Commission in 2018, and in the current programme of work last year, in 2019. An open-ended Study Group on this topic was created by the Commission during the last session, in 2019.

The commission also decided that the Group would be co-chaired on a rotational basis by myself, Mr Yacouba Cisse, Ms Patricia Galvao Teles, Ms Nilufer Oral and Mr Juan Jose Ruda Santolaria.

The Study Group, at its first meeting, decided that, under the co-chairpersonship of Ms. Oral and myself, the first issues paper to be elaborated by the co-chairs in 2020 would be dedicated to sea-level rise issues related to the law of the sea – , and that the second issues paper of the co-chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) would cover the sea-level rise issues related to statehood and to the protection of persons affected by sea-level rise.

As you know, the first issues paper was elaborated and published this year as an official document on the website of the Commission.

As agreed by the Study Group last year, the issues paper, which is the product of the co-chairs, is intended to serve as the basis for the discussions of the members of the Study Group and for its annual contribution, as well as the basis for subsequent reports of the Study Group on each subtopic. Members of the Study Group would be invited to put forward contribution papers that could comment upon, or complement, the issues paper prepared by the Co-Chairs (by addressing regional practice, case law or any other aspects of the subtopic).

It was also decided that at the end of each session of the Commission, the work of the Study Group would be reflected in a substantive report, taking due account of the issues paper prepared by the Co-Chairs and the related contribution papers by the members, while summarizing the discussion of the Study Group. That report would be agreed upon in the Study Group and subsequently presented by the Co-Chairs to the Commission, so that a summary could be included in the annual report of the Commission.

So, it is important to stress that the first issues paper only represents the views of the two co-chairs (Ms Oral and myself). Because of the pandemic, the session of the Commission being postponed, the first issues paper was not yet discussed in the Study Group. Nevertheless, the co-chairs kindly asked the members of the Study Group to submit their comments on the first issues paper, and we are grateful to those members who already presented to us their comments – which have an informal and preliminary character.

Let me present to you briefly the structure and the content of the first part of the issues paper, that is the Introduction, Part One and Part Two (chapters I and II), while Ms Oral will present the second part of the issues paper.

The Introduction, beyond aspects related to the history of the inclusion of topic in the Commissions' programme and the consideration of the topic by the Commission, also includes a presentation of the debate in the 6th Committee on the topic starting with 2017.

This presentation shows a growing support for the topic – first on the issue of including it in the long-term programme of the Commission, and then in its current programme of work. It also presents in a condensed manner the main views expressed by the Member States in relation to the topic, especially on the issues of State practice on the topic, on the need for the Commission to respect in the course of the work on the topic the UNCLOS provisions, on the need to fill in the existing lacuna of non-regulation by the current international law of this topic, and on the issue – which we, the co-chairs, consider very important in dealing with this topic – of preserving legal stability, security, certainty and predictability

in international law. It also presents the views of those few Member States that opposed the inclusion of the topic on the Commission's programme.

The Introduction also includes a brief review of the scientific findings and prospects of sea-level rise, a presentation of the previous references to this topic in the works of the Commission and the consideration of the topic by the International Law Association.

Then, Part One presents the scope and proposed outcome of the topic, including the limits of action by the Study Group as agreed by the members of the Commission in the 2018 Syllabus (which was the basis of the decision to include the topic in the long-term programme). Let me remind these limits: the topic does not deal with protection of environment, climate change per se, causation, responsibility and liability, it does not intend to provide an exhaustive scoping of the application of international law to the questions raised by sea-level rise, but to outline some key issues in the already mentioned three areas to be examined, which should be analysed only within the context of sea-level rise; and this topic will not propose modifications to existing international law, such as UNCLOS.

Then, the final outcome, as agreed in the 2018 Syllabus, is presented - "a mapping exercise of the legal questions raised by sea-level rise and its interrelated issues", which could contribute to the endeavours of the international community to respond to these issues and to assist States in developing practicable solutions in order to respond effectively to the issues prompted by sea-level rise, under the form of a final report of the Study Group, accompanied by a set of conclusions on its work. This final report would be finalised in the next quinquennium.

Then, the issues paper presents the methodological approach – which focuses on the State practice. At this point, I would like to emphasize how important it is for our work to have such practice available to the Study Group. As you probably noticed from the first issues paper, we have relied mainly on the limited number of responses to the Commission's request included in the 2019 annual report (we are grateful to the Member States which responded) and on the national statements in the 6th Committee (so, we are looking forward to our today's exchange). That is why we, as co-chairs of the Study Group, use this opportunity to renew our appeal for the Member States to send to the Commission State practice from all world regions.

Now, Part Two focuses in chapter I on the possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces that are measured from the baselines. After section A of this chapter presents an overview of the UNCLOS provisions on the role of baselines in establishing maritime spaces and their outer limits, section B presents an analysis of the effects of the ambulation of the baseline as a result of sea-level rise. This analysis is based not only on the interpretation of the mentioned UNCLOS provisions, but specifically on the positions expressed by the Member States in the submissions to the Commission in response to the request for State practice and in their statements before the 6th Committee. We have noticed, as already emphasised, a high degree of convergence as to the need for preserving legal stability, security, certainty and predictability in connection with the present topic. These positions of Member States also provide clear examples of State practice that, on one hand, refer to the establishment of fixed baselines (and outer limits of maritime zones) and, on the other hand, to measures of physical protection of their coasts against sea-level rise effects.

All statements tackling the issue of baselines (and limits of maritime zones) have advocated for the solution of fixed baselines and/or maintaining the position of maritime zones/the maritime entitlements, while no statement was in favour of an ambulatory system.

We have also analysed practice of regional organizations (see para 102).

The preliminary conclusions of our analysis from this chapter are included in para 104 of the first issues paper, and because of their length I will not repeat them now.

Then, chapter II of Part Two focuses on the possible legal effects of sea-level rise on maritime delimitations. After presenting briefly the maritime delimitation rules and method, the chapter points out (in para 111) that, as in the case of the possible legal effects of sea-level rise on baselines and the outer limits of maritime zones, also in the case of examining the possible legal effects of sea-level rise on maritime delimitations a key approach should be to favour the preservation of legal stability, security, certainty and predictability, as emphasized by the Member States in their statements before the Sixth Committee. Indeed, bringing into question effected maritime delimitations would create uncertainty and legal insecurity, and increase the risk of disputes if States were to renegotiate their maritime boundaries (para 112).

The chapter also analysed whether sea-level rise represents a fundamental change of circumstances (as per Article 62(2) of the 1969 Vienna Convention on the law of treaties) that might be invoked in order to question effected maritime delimitations. The first issues paper comes to the conclusion, including based on the existing international jurisprudence, that States cannot invoke article 62, paragraph 2 (a), of the 1969 Vienna Convention to unilaterally terminate or withdraw from a maritime boundary treaty, including because of sea-level rise. At any rate, sea-level rise cannot be assimilated with a fundamental change of circumstances, since it is not a sudden phenomenon and it cannot be claimed that it could not be foreseen.

Then, beyond legal interpretation of various treaties and jurisprudence, we analysed the positions expressed by the Member States in the submissions to the Commission in response to the request for such practice, and in their statements before the 6th Committee. They converge, to a large extent, as far as the need for preserving legal stability, security, certainty and predictability of maritime delimitations in connection with the present topic.

We have also used the research on treaty practice kindly undertaken by the Secretariat of the Commission, based on a review of treaties and international agreements registered or filed and recorded with the UN Secretariat and published in the UN Treaty Series database. The search in the database of the approximately 250 treaties relating to maritime delimitation, revealed that most of them, with a few exceptions, do not include provisions on amendments. On the contrary, a number of these treaties expressly include provisions on the permanent character of the respective maritime delimitation. At the same time, the search in the UN Treaty Series database did not reveal any treaty providing for the explicit adjustment of a maritime delimitation as a consequence of sea-level rise.

The conclusions of this chapter were included in para 141 of the first issues paper. With your permission, I will stop here and ask my co-chair, colleague and good friend Nilufer to take over from me. Thank you!