



Statement by the Republic of Cyprus

Report of the International Law Commission [item 78] Chapter IX: Sea-level rise in relation to international law (Cluster II) Sixth Committee, 77th UN General Assembly, 1 Nov. 2022

Madame Chair,

My delegation wishes to comment on Chapter IX: Sea-level rise in relation to international law. At the outset, we would like to thank the Co-Chairs of the Study Group on sea-level rise in relation to international law, Ms. Galvão Teles and Mr. Ruda Santolaria for the preparation of the second issues-paper on issues related to statehood and to the protection of persons affected by sea-level rise (A/CN.4/752) issued in April 2022, together with a selected bibliography (A/CN.4/752/Add.1), as well as for their remarks and proposals that were included in the Committee's report.

As a result of continued ocean and atmospheric warming, rising sea levels pose a grave threat to the lives and livelihoods of populations as well as to human infrastructure across the globe and, in particular, those of low-lying coastal countries and small island developing States. Indeed, as an island-State itself, Cyprus has experienced directly the gravity of the phenomenon of climate change and climate-induced sea level rise. Cyprus appreciates the work of the ILC Study Group to provide legal clarifications as to the possible effects of rising sea levels, and at the same time reiterates its position that the Study Group has no mandate to propose modifications to existing international law, including the customary nature of the UN Convention on the Law of the Sea (UNCLOS) and in particular on the regime of the islands. We cannot overstate the indispensability of fully respecting the letter and spirit of UNCLOS in conducting such work and of ensuring that the content of the said study will fully comply with the Convention. In that regard, we welcome the emphasis given by the members of the Study Group during their discussions to the central role of the UNCLOS and the need to preserve its integrity, as mentioned in paragraph 189 of the report.

Moving into the substance of the report, Cyprus would like to draw your attention to three key points.

First, on permanent baselines.

As a means to addressing the legal effects of coastal erosion, coastal States may designate permanent baselines pursuant to Article 16 UNCLOS to withstand any subsequent regression of the low-water line. This view is in conformity with UNCLOS and aims at safeguarding coastal States' legal entitlements in light of the ongoing, worrisome developments generated by climate change.

Cyprus appreciates the important work already conducted by the Commission on the Limits of the Continental Shelf (CLCS) in guiding States in fixing permanent baselines and this Study Group is encouraged to consult on the most recent findings by the CLCS and consider it for future reports.

Moreover, baselines must be permanent and not ambulatory so as to achieve greater predictability on maritime boundaries, in line with UNCLOS, customary international law and international jurisprudence.¹ Cyprus also supports the view that States can draw permanent baselines, which would withstand coastal erosion. Fixing baselines at a certain point in time by way of maritime delimitation agreement and the decisions of the ICJ, ITLOS and arbitral tribunals established pursuant to UNCLOS, and other means is also consistent with the Vienna Convention on the Law of Treaties (“VCLT”). In this respect, the principle of fundamental change of circumstances (*rebus sic stantibus*) enshrined in Article 62(1) of the VCLT,² would have no effect on existing maritime delimitation treaties.³ Article 62(2)(a) of VCLT specifically provides that a fundamental change of circumstances may not be invoked as grounds for terminating or withdrawing from a treaty if “the treaty establishes a boundary.” This approach enables States to control the entire protective legal measure by the publication of their baseline or through concluding delimitation agreements.⁴ Thus, the effects of rising sea levels on baselines should have no legal effect on the status of a concluded maritime treaty. Additionally, it should be stressed that boundaries, including maritime boundaries, may continue to exist even if the treaty by virtue of which they were established is no longer in force.⁵ Moreover, maritime boundaries designated by international judicial bodies should also remain intact in case of rising sea levels.

¹ *Maritime Boundary Arbitration in the Bay of Bengal (India v. Bangladesh)*, Award, 7 July 2014, ¶¶ 214-215: “In the view of the Tribunal, this argument is not relevant. *The issue is not whether the coastlines of the Parties will be affected by climate change in the years or centuries to come.* It is rather whether the choice of base points located on the coastline and reflecting the general direction of the coast is feasible in the present case and at the present time ... *The Tribunal is concerned with the “physical reality at the time of determination. It need not address the issue of the future instability of the coastline.”* (Emphasis added).

² Article 62(1) VCLT reads: “A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty”.

³ See *Aegean Sea Continental Shelf Case*, ¶ 85 (“The dispute relates to the determination of the respective areas of continental shelf over which Greece and Turkey are entitled to exercise the sovereign rights recognized by international law . . . Whether it is a land frontier or a boundary line in the continental shelf that is in question, *the process is essentially the same, and inevitably involves the same element of stability and permanence, and is subject to the rule excluding boundary agreements from fundamental change of circumstances.*”) (emphasis added). See also *Guinea-Bissau/Senegal*, ¶ 63; see also *Maritime Boundary Arbitration in the Bay of Bengal (India v. Bangladesh)*, Award, 7 July 2014, ¶ 218 (“The possibility of change in the maritime boundary established in the present case would defeat the very purpose of the delimitation.”).

³ See ILA Committee on International Law and Sea Level Rise, Final Report (Sydney, 2018), p. 12.

⁴ C. Hioureas and A. Torres Camprubí, “Legal and Political Considerations with respect to the Disappearance of States,” *New Knowledge and Changing Circumstances in the Law of the Sea* (Brill, 2020), p. 420.

⁵ Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27, January 1980) 1155 UNTS 331, art 70(1)(b); *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Judgment) [1994] ICJ Rep 37, paras 72–73; *Territorial and Maritime Dispute (Nicaragua v Colombia)* (Preliminary Objections) [2007] ICJ Rep 832, para 89.

We, therefore, affirm and reiterate our prior observations that the limitation on the application of the principle of *clausula rebus sic stantibus*, as provided for in Article 62(2) of the VCLT, applies also to maritime boundaries as affirmed by jurisprudence, which recognizes that there was no distinction between land and maritime boundaries. This view is contingent on and reflects the pertinent international jurisprudence.

Cyprus brought this point to the attention of this Commission during the prior Session; yet, this established position is not reflected in the 2022 Study Group Report. We call on the Members of the Study Group to include this important and established principle in its work.

Second, on the doctrine of Statehood.

Cyprus thanks the Commission for the inclusion of our remarks on Statehood in the 2022 Report⁶ – particularly with reference to the words of late Judge James Crawford: “[a] State is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three.”⁷

Cyprus recognizes the Study Group’s focus on the criteria for the creation of a State or also known as “the codification of statehood” on existing mechanisms such as the 1933 Montevideo Convention on the Rights and Duties of States, the 1936 Resolution of the *Institut de Droit International*, and the 1949 Draft Declaration on Rights and Duties of States.⁸

As noted in the Report, the Convention on the Rights and Duties of States provides that the rights of a State derive from the simple fact of its existence as a “person” or subject of international law, and that the fundamental rights of States are not susceptible of being affected in any manner whatsoever (Articles 4 and 5, respectively). Cyprus also agrees with the observance of paragraph 198 that a possible study regarding the Convention of Rights and Duties of States should take account of the decisions of the Security Council of the United Nations which are of paramount importance for cases of statehood. Furthermore, on the matter of the preservation of an affected population as people for the purposes of exercising the right of self-determination, we note the observation in paragraph 199 that the Commission should keep in mind the special historical and legal contexts of the right of self-determination, and we emphasize that the principle of self-determination was transmuted into a right under international law in the course of the decolonization movement,⁹ and has always been applied to situations of colonial rule or foreign occupation.

⁶ Sea-level Rise in Relation to International Law (Second Issues Paper, 19 April 2022, A/CN.4/752), ¶¶ 37, 190; Cyprus (A/C.6/73/SR.23, ¶ 48; A/C.6/74/SR.30, ¶ 102; and A/C.6/76/SR.22, ¶ 101).

⁷ J. Crawford, *The Creation of States in International Law* (Clarendon Press, 2nd rev. ed. 2006).

⁸ Sea-level Rise in Relation to International Law (Second Issues Paper, 19 April 2022, A/CN.4/752), p. 21.

⁹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] paras 150-160.

Third, on the absence of a dedicated legal framework and of a distinct legal status for persons affected by sea-level.

Cyprus notes that there is no binding international legal instrument that specifically addresses cross-border movements induced by climate change and for the protection of persons forcibly displaced due to the adverse effects of climate change, such as sea-level rise. Cyprus remains interested in the development of such an initiative.

I thank you for your attention.