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**STATEMENT OF THE CHAIR OF THE INTERNATIONAL LAW COMMISSION,**

**Ms. PATRÍCIA GALVÃO TELES/Ms. NILUFER ORAL**

**23 October 2023**

Mr. Chair,

I am delighted to see you serving in the present capacity as Chair of the Sixth Committee. Please accept the warm greetings, and the best wishes of the International Law Commission for a successful session. I also extend my warm congratulations to the other members of the Bureau.

This is a special year for the Commission as it began a new quinquennium. We have new and returning members, all working together in a collegiate spirit towards the Commission's objective in the promotion of the progressive development of international law and its codification.

In 2010, thirteen years ago, the Commission elected Hanquin Xue as its first woman chair since the commencement of its work in 1949. Judge Xue never came to address the Sixth Committee in that capacity as she resigned upon her election as a Judge at the International Court of Justice, where she still serves. This year, the boundaries of international law were extended further hoping to untap humanity's potential to have a fairer, representative and more inclusive society. It is no small measure that the seventy-fourth session of the Commission this year was chaired by Nilüfer Oral and myself. According to this exceptional arrangement, Ms. Oral served as chair during the first part of the session, while I acted in that capacity for the second part of the session and continue to do so. My esteemed friend and dear colleague, Ms Oral and myself are here today. It is our hope that the symbolism this carries will bring us closer to a shared goal of making international law the bastion not only for peace but also one whose structures and methods are informed by the diversity of the people it represents. Nilufer and I carried out our tasks with mutual friendship and respect and to reflect our shared responsibility we will introduce the present statement together: I will start and Nilufer will conclude.

Mr. Chair,

In line with the recent practice, the report of the Commission will be introduced in one single intervention.

The report of the Commission for this year is contained in document **A/78/10**. The Commission's overall output is summarised in Chapter II of the report. In the course of this year's session the Commission made substantial progress in its work, an unusual feat for the first year of the quinquennium.

First, the Commission adopted, on first reading, **11 draft conclusions on general principles of law**, together with commentaries thereto. The Commission expresses its deep appreciation for the outstanding contribution of the Special Rapporteur, Marcelo Vázquez-Bermúdez, which enabled the Commission to bring to a successful conclusion its first reading of the draft conclusions on this topic.

The Commission made a further advancement on the topic "**Sea-level rise in relation to international law**". It reconstituted the Study Group which had before it the additional paper to the first issues paper addressing issues related to the law of the sea, prepared by Bogdan Aurescu and Nilüfer Oral.

The Commission also commenced its consideration and made good strides on three new topics included in its work programme last year: "**Settlement of disputes to which international organizations are parties**", "**Prevention and repression of piracy and armed robbery at sea**", and "**Subsidiary means for the determination of rules of international law**".

In addition, the Commission established a Working Group on the topic "**Succession of States in respect of State responsibility**". The Working Group considered the way forward in relation to the topic the first reading of which had not been completed. The Commission took note of the Working Group's recommendation that it should be re-established at the next seventy-fifth session of the Commission with a view to undertaking further reflection, and making a recommendation, on the way forward for the topic. We take this opportunity to reiterate the gratitude of the Commission to Pavel Sturma for his work on this topic.

The Commission also decided to appoint Claudio Grossman as Special Rapporteur for the topic "**Immunity of State officials from foreign criminal jurisdiction**" to succeed to the previous

Special Rapporteur, Concepción Escobar Hernández, who is no longer with the Commission. In this case, the first reading has been completed. We take this opportunity to reiterate the gratitude of the Commission to Concepción Escobar Hernández for her work on this topic. At this session, the new Special Rapporteur held informal consultations on the topic with members of the Commission. The Commission awaits comments and observations of Governments and will resume consideration of the topic at its next session (2024). Bearing in mind the importance of the topic for States in international relations, the Commission can only reiterate its wish that it receives comments and observations on the topic from as many Governments as possible **by 1 December 2023**.

Last but not least, I wish to note that the Commission decided to include the topic “**Non-legally binding international agreements**” in its programme of work and to appoint Mathias Forteau as Special Rapporteur, whose first report is expected next year.

Mr. Chair,

Aside the substantive work, the re-established Working Group on the Long-term Programme of Work, chaired by Marcelo Vázquez-Bermúdez, continued its consideration of proposals for new topics, including six new proposals introduced at the current session. All the proposals will remain within the Working Group until such time the Working Group is in a position to make a recommendation to the Commission. Relatedly, I recall there are currently nine topics that remain inscribed in the long-term programme of work from previous quinquennia.

The Commission attaches great importance on improving its working methods. It re-established the Working Group on methods of work, under the leadership of Charles Chernor Jalloh. The Commission endorsed the recommendations of the Working Group that a new reporting practice be adopted whereby a brief summary of the Working Group’s deliberations will be included in the Commission’s annual report to the General Assembly. The Commission also requested the Secretariat to prepare a draft of an internal practice guide, handbook or manual to the working methods and procedures of the Commission.

In its report, the Commission, pursuant to resolution 77/110 of 7 December 2022, has again commented on its current role in promoting the rule of law and has reiterated its commitment to the rule of law in all of its activities.

Furthermore, the Commission noted with appreciation that, pursuant to paragraph 37 of General Assembly resolution 77/103 of 7 December 2022, the Secretary-General has established a trust fund to receive voluntary contributions for assistance to Special Rapporteurs of the International Law Commission or Chairs of its Study Groups and matters ancillary thereto and appealed to Member States, NGOs, private entities and individuals to contribute to the trust fund. We appeal for contributions to the trust fund to assist in the functioning of the Commission, and further advance the work of Special Rapporteurs and Chairs of Study Groups.

Mr. Chair,

This year, Judge Joan E. Donoghue, the President of the International Court of Justice, addressed the Commission in person on 18 July 2023. Moreover, the Commission resumed its full schedule of interactions with other bodies. In July, it held meetings with representatives of the African Union Commission on International Law; the Asian-African Legal Consultative Organization; the Committee of Legal Advisers on Public International Law of the Council of Europe; and the Inter-American Juridical Committee. An informal exchange of views was also held between members of the Commission and the International Committee of the Red Cross on matters of mutual interest.

Permit me also to note, sadly, that in the course of the session, the Commission convened a memorial meeting in honour of the passing of former members, whose contribution to the academy remains part of the living repository of the Commission and international law: Gaetano Arangio-Ruiz, Guillaume Pambou Tchivounda, Sompong Sucharitkul, Nugroho Wisnumurti, and João Clemente Baena Soares.

The Commission decided that its seventy-fifth session next year would be held in Geneva from 15 April to 31 May and from 1 June to 2 August 2024. This is a commemorative year. Accordingly, plans are afoot to convene during the first part of the session a solemn meeting of the Commission to which dignitaries, including the Secretary-General, the President of the General

Assembly, the President of the International Court of Justice, the United Nations High Commissioner for Human Rights, and representatives of the host Government would be invited. This would be followed by one and a half days of meetings with legal advisers of Ministries of Foreign Affairs dedicated to the work of the Commission. The Commission also encourages Member States, in association with regional organizations, professional associations, academic institutions and members of the Commission concerned to convene national or regional meetings, which would be dedicated to the work of the Commission.

In addition, to facilitate direct contact between the Commission and delegates of the Sixth Committee, the Commission requested the Secretariat to proceed with the necessary administrative and organizational arrangements to facilitate the holding of the first part of its seventy-seventh session (2026) in New York. It is our hope that the Sixth Committee could endorse the recommendation of the Commission to hold the first part of its session in 2026 in New York, similarly to what has been done in the past.

Allow me at this stage to acknowledge the invaluable assistance of the Codification Division of the Office of Legal Affairs in the technical and substantive servicing of the Commission. The Secretariat is in every much an integral part of the working methods of the Commission, and the Commission is grateful for its work, in particular its continued preparation of studies and memorandums on matters on the work programme of the Commission. The Commission was also particularly pleased to receive the Legal Counsel of the United Nations for the traditional annual briefings on activities and developments concerning the Office of Legal Affairs.

As a final note at this juncture, let me also express the Commission's gratitude for the continued support of the United Nations Library at Geneva, The Commission wishes to emphasize the need to limit as much as possible the impact of the ongoing renovation at the Palais des Nations on the research spaces and the legal collection of the Library, especially during the next session of the Commission.

Mr. Chair,

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 *toilettage* 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-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2024.

Draft conclusions 1 to 3 are introductory in nature. Draft conclusions 4 to 6 address aspects concerning general principles of law derived from national legal systems. Draft conclusions 7 deals with general principles of law formed within the international system. Draft conclusions 8 to 9 focus on the role of decisions and teachings in the determination of principles while draft conclusions 10 to 11 address matters of an ancillary nature attendant to the overall appreciation of the draft conclusions.

**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 demonstrating that a general principle of law has been “recognized” in the sense of Article 38,

paragraph 1 (c), of the Statute of the International Court of Justice. It is an objective method to be applied by all those called upon to determine whether a given general principle of law exists at a specific point in time and what the content of that general principle of law is.

**Draft conclusion 5 (determination of the existence of a principle common to the various legal systems of the world)** addresses the first step of the two-step methodology for the identification of general principles of law derived from national legal systems set out in draft conclusion 4, while **draft conclusion 6 (determination of transposition to the international legal system)** concerns the second step.

**Draft conclusion 7 (identification of general principles of law formed within the international legal system)**, addresses the second category and provides that, to determine the existence and content of a general principle of law that may be formed within the international legal system, it is necessary to ascertain that the community of nations has recognized the principle as intrinsic to that system. Draft conclusion 7 also indicates that the draft conclusion is without prejudice to the question of the possible existence of other general principles of law formed within the international legal system. This paragraph was included to reflect the view of some members of the Commission who supported the existence of general principles of law formed within the international legal system, but considered that paragraph 1 of the draft conclusion would be too narrow and would not encompass other possible principles that, while not intrinsic in the international legal system, may nonetheless emerge from within the latter system and not from national legal systems.

**Draft conclusion 8 (decisions of courts and tribunals)**, concerns the role of decisions as an aid in the identification of general principles of law. With regard to decisions of international courts and tribunals, draft conclusion 8 follows closely the language of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice, in specifying that judicial decisions are a subsidiary means for the determination of rules of international law, including general principles of law. The draft conclusion also indicates that, where appropriate, decisions of national courts may serve as a subsidiary means for the determination of general principles of law.



**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.

### ***Chapter VIII: Sea-level rise in relation to international law***

Mr. Chair,

I now turn to **chapter VIII** of the report, which covers the topic “**Sea-level rise in relation to international law.**”

At this year’s session, the Commission reconstituted the Study Group on sea-level rise in relation to international law. 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 and Add.1) to the first issues

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.

The attention of delegations is drawn to questions in **Chapter III** of the Commission’s

report related to the subject of sea-level rise in relation to statehood and protection of persons affected by sea-level rise. Governments are encouraged to provide information, or any updates to information already submitted, on the issues indicated therein.

The Commission would also welcome any information that States, international organizations and other relevant entities could provide on their practice, as well as other pertinent information concerning sea-level rise in relation to international law, and reiterates its requests made in chapter III of its reports on its work the 2019, 2021 and 2022 sessions.

Mr. Chair, with your permission, Nilufer Oral will now continue with the presentation of the Report.

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Mr. Chair,

As Chair of the first part of the 74<sup>th</sup> session I am pleased to present the remaining substantive chapters of the work of the Commission. May I take this opportunity to express the great honour it was to be Chairperson of the Commission and share this with my dear friend and current Chairperson, Patricia.

***Cluster II: Chapter V, Settlement of disputes to which international organizations are parties and VI, Prevention and repression of piracy and armed robbery at sea***

***Chapter V: Settlement of disputes to which international organizations are parties***

I shall now turn to the second cluster of chapters, beginning with the topic “**Settlement of disputes to which international organizations are parties**”, which is addressed in **chapter V** of the report.

This topic was included in the programme of work of the Commission last year. The Commission also requested the Secretariat to prepare a memorandum providing information on the practice of States and international organizations which may be of relevance to its future work

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 of application of the draft guidelines. They concern the settlement of disputes to which international organizations are parties. The provision should be read together with draft guideline 2, which sets out the use of the terms “international organization”, “dispute” and “means of dispute settlement”. These terms also contribute to delimiting the scope of the topic.

**Draft guideline 2 (use of terms)** provides for the use of the three core terms referred to expressly or implicitly in draft guideline 1, namely “international organization”, “dispute” and the consequent “means of dispute settlement”. It bears noting that the definition of “international organization” in subparagraph (a), builds on the definition contained in article 2, subparagraph (a), of the articles on the responsibility of international organizations, adopted by the Commission and taken note of by the General Assembly in 2011. It outlines the commonly accepted characteristic features of an international organization, while stressing the possession of its “own international

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 Special Rapporteur (A/CN.4/758) and the memorandum prepared by the Secretariat concerning the topic (A/CN.4/757) at the request of the Commission. The Special Rapporteur’s report addressed the historical, socio-economic and legal aspects of the topic, including an analysis of the international law applicable to piracy and armed robbery at sea, and the shortcomings thereof. It reviewed the national legislation and judicial practice of States concerning the definition of piracy and the implementation of conventional and customary international law. The Special Rapporteur proposed three draft articles, which following the plenary debate, were referred to the Drafting Committee for consideration, taking into account the views expressed in Plenary. The Commission subsequently received the report of the Drafting Committee and **provisionally adopted draft articles 1, 2 and 3, with commentaries**.

**Draft article 1(scope)** defines the “**Scope**” of the draft articles, indicating that they apply to piracy and armed robbery at sea. Draft article 1 must be read together with draft articles 2 and 3, which define these two crimes and further serve to delimit the scope of the topic. The Commission noted that it is envisaged that the draft articles apply to the “prevention” and “repression” of piracy and armed robbery at sea. As noted in the commentary, “prevention” is the act of stopping something from happening or arising, while “repression” is the act of subduing or suppressing something that has arisen.

**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 rules set forth in existing treaties, including the Convention. The Commission, however, acknowledged that there were certain elements of the definition of piracy contained in article 101 of the Convention which posed questions of interpretation and application, especially in view of the evolving nature of modern piracy. The commentary to draft article 2, clarifies these elements further. The Commission considered whether an explicit reference should be made to the exclusive economic zone but decided instead to include a reference to the provisions of article 58, paragraph 2, of the Convention in **paragraph 2 of draft article 2**. The paragraph was drafted in a neutral manner so as not to prejudice the position of non-parties to the Convention. Moreover, the separation between the **paragraph 1 and 2** recognizes that the exclusive economic zone and the high seas are two distinct maritime spaces.

**Draft article 3 (definition of armed robbery at sea) defines armed robbery at sea.** The definition is drawn from the one adopted by the Assembly of the International Maritime Organization in its Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships. Subparagraphs (a) and (b) of draft article 3 correspond to subparagraphs 1 and 2 respectively of paragraph 2.2 of the Code. The Commission considers that there is not necessarily any substantive difference between piracy and armed robbery at sea as far as the conduct itself is concerned. The main difference between piracy and armed robbery at sea lies in the location of the act: the high seas and exclusive economic zone on one hand, and the internal and territorial waters of the coastal State on the other. This has consequences for the applicable jurisdiction in respect of the two crimes. In the case of piracy, it is acknowledged that universal jurisdiction applies such that any State has the right to prosecute the crime of piracy committed on the high seas. With

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 debate of the Commission on the Special Rapporteur's first report is contained in **paragraphs 66 to 125** of the Commission's report. After the debate in Plenary, the Commission decided to refer the five draft conclusions, as proposed in the first report, to the Drafting Committee. The Drafting Committee was able to conclude the substantive consideration of the five draft conclusions referred to it by the Plenary.

The Commission considered the report of the Drafting Committee containing the text of draft conclusions 1 to 3, provisionally adopted by the Drafting Committee. The Commission provisionally adopted draft conclusions 1 to 3, with commentaries thereto, which can be found in **paragraph 127 of the report**. The Commission also took note of draft conclusions 4 and 5, as provisionally adopted by the Drafting Committee (**draft conclusion 4, "Decisions of courts and tribunals"; and draft conclusion 5, "Teachings"**), and a summary of the debate in the plenary on these two draft conclusions can be found in **paragraphs 100 to 107 of the report**.

A few comments on the three draft conclusions adopted by the Commission at the present session. **Draft conclusion 1 (scope)**, concerns the "**scope**" of the draft conclusions. The inclusion of a scope provision follows the established practice of the Commission and reflects the Commission's intention to focus on the question of the use of subsidiary means for the determination of rules of international law. The Commission considered that subsidiary means interact with the sources, but are not themselves sources of international law and that they assist in the determination of rules of law. The final phrase refers to "rules of international law", in line with the principal thrust and of the topic.

The chapeau of **draft conclusion 2 (categories of subsidiary means for the determination of rules of international law)** uses the term "include" and subparagraphs (a) and (b) follow the structure of Article 38(1)(d) of the Statute of the International Court of Justice, refer to the "decisions of courts and tribunals" and "teachings", consistent with the recent practice of



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 “**Succession of States in respect of State responsibility**”.

This year, the Commission had no report before it on the topic. As Special Rapporteur, Pavel Šturma, to whom the Commission is most grateful, was no longer with the Commission, it decided to establish a Working Group on the topic and appointed August Reinisch as its Chair.

The Working Group held four meetings, at which it focused its discussion on considering the way forward. It considered whether the Commission should continue developing a text in the Drafting Committee and proceed to conclude the first reading of the draft guidelines, or whether it should pursue a different course, as suggested in the plenary in 2022, and convene a dedicated Working Group with a view to eventually producing a report on the topic to be adopted by the Commission.

The preponderance of views within the Working Group favoured the conversion of the present Special Rapporteur driven format into a Working Group-based process, with the goal of producing a final report as opposed to the adoption of draft guidelines. There was nonetheless a greater preference for a more incremental approach, whereby a decision on such a way forward would be taken only next year, so as to allow more time for assessing the options.

Accordingly, the Working Group decided to recommend that the Commission continue its consideration of the topic at the next session in the format of an open-ended working group with a view to undertaking further reflection and discussion on the way forward for the topic, taking into account the views expressed, and the options identified, in the Working Group at the current session. Such further reflection would be undertaken on the basis of a working paper examining the work of the Commission thus far and outlining the options open to the Commission, to be prepared by the Chair of the Working Group in advance of the seventy-fifth session of the Commission, in close collaboration with interested members of the Working Group. It was recommended that the re-established Working Group should seek to make a recommendation with a view to the Commission taking a decision on the way forward at its next session.

Mr. Chair,

The Commission and the Sixth Committee have a shared interest in the progressive development of international law, and its codification which goes beyond the founding of the United Nations. While we find ourselves in a bleak moment in history, without question, we must

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.