

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 Santolalla, 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

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. 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 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 39 & / 7. In this respect, the principle of fundamental change of circumstances (*rebus sic stantibus*) enshrined in Article 62(1) of the VCLT² would have no effect on existing maritime delimitation treaties.³ Article 62(2)(a) of VCLT specifically provides that a fundamental change of circumstances which has occurred with regard to existing treaties, 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including maritime boundaries, may continue to exist even if the treaty by virtue of which they were established is no longer in force.⁵ Moreover, maritime boundaries designated by international judicial bodies should all remain intact in case of rising sea levels.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, but 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.” (P S K D V L V D G G H G)

² § U W L F O H. A fundamental change of circumstances which has occurred with regard to existing treaties 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:

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.

Secondly, on the doctrine of Statehood.

Cyprus thanks the Commission for the inclusion of our remarks on Statehood in the 2022 Report particularly with reference to the words of Judge James Crawford > D @ 6 W D W H L V Q R W extinguished by substantial changes in territory, population or government, or even, in some cases, E \ D F R P E L Q D W L 7 R Q R I D O O W K U H H '.

& \ S U X V U H F R J Q L] H V W K H 6 W X G \ * U R X S \ V I R F X V S R I O W W K H F U L D V 3 W K H F R G L I L F D W E X I S T I N G R E C H A N G E S S U C H A S R E G 9 3 3 M o n t e v i d e o C o n v e n t i o n 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.

As noted in the Report, the Convention on the Rights and Duties of States provides that the rights of D 6 W D W H G H U L Y H I U R P W K H V L P S O H I D F W R I L W V H [L V W H Q F that the fundamental rights of States are not susceptible of being affected in any way whatsoever (Articles 4 and 5, respectively). Cyprus also agrees with the observation in paragraph 198 that a possible study regarding the Convention on 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 case of the decolonization movement and has always been applied to situations of colonial rule or foreign occupation.

⁶ Sealevel 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.101).

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

⁸ Sealevel 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 (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.