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Report of the International Law Commission on the work of its seventy-sixth session (2025)

**Topical summary of the discussion held in the Sixth Committee of the
General Assembly during its eightieth session, prepared by the
Secretariat**

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I. Introduction

1. At its eightieth session, the General Assembly, on the recommendation of the General Committee, decided at its 2nd plenary meeting, held on 12 September 2025, to include in its agenda the item entitled “Report of the International Law Commission on the work of its seventy-sixth session” and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 26th to 37th meetings, and at its 38th meeting, held from 27 October to 14 November, and on 21 November 2025. The Chair of the seventy-sixth session of the International Law Commission, Mr. Mārtiņš Paparinskis, introduced the report of the Commission on the work of that session (A/80/10) at the 26th meeting, on 27 October. The Committee considered the report in two clusters, namely: cluster I (chapters I, II, III, IV, VI and XII) at its 26th to 31st meetings, from 27 to 31 October; and cluster II (chapters V, VII, VIII, IX, X and XI) at its 31st to 37th meetings, from 31 October to 14 November.

3. At its 38th meeting, on 21 November, the Sixth Committee adopted draft resolution A/C.6/80/L.21 entitled “Report of the International Law Commission on the work of its seventy-sixth session”, without a vote. After the General Assembly had considered the relevant report of the Sixth Committee (A/80/450), it adopted the draft resolution as resolution 80/164 at its 63rd plenary meeting, on 15 December.

4. The present topical summary has been prepared pursuant to paragraph 45 of resolution 80/164, in which the General Assembly requested the Secretary-General to prepare and distribute a topical summary of the debate held on the report of the Commission at the eightieth session of the General Assembly.

5. The present topical summary consists of two parts. The first part contains eight sections, reflecting the current programme of work of the Commission: immunity of State officials from foreign criminal jurisdiction (A/80/10, chap. V); general principles of law (*ibid.*, chap. VI); subsidiary means for the determination of rules of international law (*ibid.*, chap. VII); settlement of disputes to which international organizations are parties (*ibid.*, chap. VIII); non-legally binding international agreements (*ibid.*, chap. IX); prevention and repression of piracy and armed robbery at sea (*ibid.*, chap. X); succession of States in respect of State responsibility (*ibid.*, chap. XI); and other decisions and conclusions of the Commission (*ibid.*, chap. XII). The second part contains a summary of the topic sea-level rise in relation to international law (*ibid.*, chap. IV), on which the Commission concluded consideration of the topic at the seventy-sixth session.

II. Topics and items on the current programme of work of the Commission

A. Immunity of State officials from foreign criminal jurisdiction

1. General comments

6. Delegations expressed appreciation to the Special Rapporteur for his second report (A/CN.4/780). Several delegations paid tribute to the former Special Rapporteur, Ms. Concepción Escobar Hernández, highlighting her substantial contribution to the draft articles and expressing condolences following her passing.

7. A number of delegations emphasized the need to strike an appropriate balance between the sovereign equality of States and accountability for the most serious international crimes. Several delegations expressed general satisfaction with the Commission’s continued progress on the topic, while regretting that, owing to the reduced length of the seventy-sixth session, the Commission had been unable to complete the second reading. A number of delegations cautioned that the topic continued to generate divergences among States, stressing the need to proceed with particular care and allow States adequate time to examine the topic.

8. Support was expressed for limiting changes to the draft articles at the second reading stage to cases where compelling reasons existed; according to another view, the Commission should proceed with caution and retain the freedom to revisit any provision as needed.

9. Several delegations reiterated the need to clearly distinguish between provisions that reflected the progressive development of international law and those that codified it. Some delegations suggested focusing on codification and several delegations expressed the view that the draft articles largely reflected existing customary international law. Other delegations affirmed that the draft articles contained provisions reflecting both codification and progressive development.

10. The importance of pursuing a consensus-based approach on the topic was emphasized, as was the need for a comprehensive and regionally representative assessment of State practice, *opinio juris* and relevant jurisprudence. The view was expressed that the Commission should be mindful of existing international criminal proceedings relevant to the topic.

2. Specific comments¹

11. With respect to **draft article 1** on scope, several delegations expressed support for the “without prejudice” clauses, which preserved the operation of special rules of international law on immunity and of treaty-based regimes establishing or relating to the operation of international criminal courts and tribunals.

12. Regarding **draft article 2** on use of terms, the view was expressed that greater clarity was required on the concept of an “act performed in an official capacity”, including its relationship to attribution under the law on responsibility of States and its relevance for *ultra vires* acts.

13. **Draft articles 3 and 4** were considered by some delegations to reflect customary international law. While several delegations supported limiting immunity *ratione personae* to Heads of State, Heads of Government and Ministers for Foreign Affairs, others considered that the scope of such immunity was broader and included additional high-ranking officials. Some delegations welcomed the clarification that immunity *ratione personae* applied only for the duration of the period of office and ceased once that period ended.

14. With respect to **draft article 7**, concerning crimes under international law for which immunity *ratione materiae* shall not apply, a number of delegations expressed support for the provision, considering it both essential to ensure accountability and consistent with international criminal law. According to those delegations, immunity *ratione materiae* should not operate as a shield against responsibility for the most serious international crimes. They emphasized that the provision was a central element of the draft articles, striking an appropriate balance between the sovereign equality of States and the need to combat impunity. Some delegations raised concerns about the provision, noting, *inter alia*, that its adoption had procedural and methodological shortcomings, that it risked politicized application and undermining the sovereign equality of States and the stability of inter-State relations, and that immunity was a procedural bar unrelated to substantive responsibility for international crimes.

15. Differing views were expressed regarding the Commission’s analysis of relevant State practice and other material in the commentary to draft article 7 as adopted on first reading.² Several delegations commended the Special Rapporteur for the detailed, balanced and persuasive analysis of State practice in the second report. Some delegations considered that the Commission’s analysis of national legislation, judicial practice, statements of States and the jurisprudence of international criminal courts and tribunals provided a sufficient basis for draft article 7. Other delegations stated that the cases cited in the commentary adopted on

¹ References to draft articles 1, 3 and 4 are to the texts adopted by the International Law Commission at the seventy-sixth session. References to draft articles 7, 8 and 9 are to the texts provisionally adopted by the Drafting Committee at the seventy-sixth session. See [A/CN.4/L.1017](#). References to the remainder of the draft articles are to the text provisionally adopted on first reading by the Commission at its seventy-third session. See [A/77/10](#), chap. VI.

² See [A/77/10](#), paras. 64–65.

first reading had been drawn mainly from certain geographical regions and were not sufficiently consistent or representative. It was mentioned that some cases concerned the preliminary stages of proceedings, were inconsistent with the current policies of the States concerned, involved situations where immunity had not been invoked, or did not pertain to the crimes listed in draft article 7. Some delegations urged the Commission to engage more deeply with recent jurisprudence, national legislation and the statements of States. The need to consider negative practice and inaction, including instances where States had chosen to refrain from exercising jurisdiction, was highlighted. The view was expressed that the cases cited reflected violations of international law rather than a new trend of progressive development. Another view was expressed that determinations of immunity were fact-intensive inquiries made on a case-by-case basis.

16. Differing views were expressed regarding the customary status of draft article 7. While several delegations considered that it reflected existing customary international law, others viewed it as progressive development and considered that it did not reflect customary international law because of the absence of widespread and representative State practice and *opinio juris* supporting it.

17. With respect to the list of crimes under draft article 7, support was expressed for retaining it, with delegations underscoring that a criteria-only approach could undermine legal certainty. Some delegations emphasized the importance of explaining in the commentary the rationale for selecting the crimes listed and pointed out that there was no hierarchy among those crimes. A number of delegations supported clarifying that the list of crimes was non-exhaustive. Other delegations reiterated their view that the list of crimes should be replaced by a criteria-only approach, stating *inter alia* that explicitly listing certain crimes might imply the exclusion of others.

18. Regarding the rationale for including specific crimes in the list, some delegations explained that the inclusion of those crimes aligned with the need to ensure accountability and to prevent impunity for the most serious international crimes. Some delegations stressed that the crimes listed were of such gravity and universal concern that they could not be treated as official acts giving rise to functional immunity. It was observed that the non-applicability of functional immunity followed from its normative incompatibility with obligations under international law providing for an extraterritorial criminal jurisdiction over crimes committed in an official capacity. The consistency of the crimes listed with the Rome Statute of the International Criminal Court and the Commission's previous work was also noted.

19. A number of delegations expressed support for the inclusion of the crimes of aggression, slavery and slave trade in draft article 7, stating that such offences represented some of the most serious crimes under international law, that their prohibitions enjoyed the status of peremptory norms of general international law (*jus cogens*) and that their inclusion strengthened accountability. It was highlighted that those crimes could not be treated as official acts giving rise to functional immunity and that their inclusion aligned with the Rome Statute, the Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (Nürnberg Principles) and the previous work of the Commission. However, some delegations opposed or expressed hesitation regarding the addition of the new crimes, particularly the crime of aggression, stating that there was insufficient evidence of State practice to support their inclusion. The customary status of the amended list was questioned. Further analysis of the inclusion of slavery and slave trade was called for, given an apparent overlapping prohibition with underlying acts already constituting crimes against humanity. It was stated that the crime of apartheid and enforced disappearance should not appear as stand-alone offences, as they fell within the broader category of crimes against humanity.

20. Several delegations underlined that draft article 7 should be read together with the procedural safeguards in Part Four to avoid politicization. The view was expressed that a clear distinction between private and official acts was required for the proper application of draft article 7. It was underscored that the wrongful invocation of exceptions to immunity could constitute an internationally wrongful act and give rise to countermeasures.

21. A number of delegations welcomed the inclusion of **Part Four** regarding procedural provisions and safeguards, highlighting its role in preventing abuse or politicization of

foreign criminal jurisdiction, in ensuring fair treatment and effective communication between States and in balancing the interests of the forum State and the State of the official. The need for robust procedural safeguards was emphasized, including timely and confidential notification to the State of the official, prior examination of immunity questions by competent authorities, clarity regarding express waiver and effective domestic frameworks for the implementation of immunities in accordance with international and regional obligations. However, some delegations questioned the effectiveness of the approach in Part Four, taking the view that the procedural safeguards risked overloading the draft articles and did not resolve the underlying disagreements on how to balance the interests of the forum State with those of the State of the official or on the appropriate scope of the draft articles. It was stated that procedural safeguards must not undermine effective investigation or prosecution of the most serious international crimes.

22. The Commission was urged to conduct a more thorough and careful examination of Part Four. It was proposed that the Commission reconsider suggestions to delete or revise certain draft articles under Part Four to address arguments regarding the lack of sufficient supporting State practice and to improve the definitional clarity, in particular as to the operation of the draft articles in domestic proceedings.

23. Some delegations requested clarification as to whether the same procedures applied to both immunity *ratione personae* and immunity *ratione materiae*. It was proposed that the Commission recognize the priority jurisdiction of the courts of the official's own State in cases of competing claims. The need to clarify the relationship between the procedural provisions and treaties on extradition and judicial cooperation and between draft articles 9 and 14 was highlighted. The view was expressed that universal jurisdiction should not apply automatically and that treaty-based immunity regimes must be respected. It was stated that national criminal jurisdiction, especially over the crime of aggression, could only be exercised after a prior determination by a competent tribunal or organ that the State concerned had committed aggression.

24. Views diverged as to the appropriate form for Part Four, with some delegations favouring turning it into non-binding guidelines or conclusions and others opposing such an approach in order to preserve a unified normative framework.

25. Some delegations expressed support for **draft article 8** on the application of Part Four; however, clarification on the scope and operation of Part Four was requested.

26. Several delegations expressed support for **draft article 9** on examination of immunity by the forum State, considering that timely examination reflected due process, respected the sovereign equality of States and enhanced fairness and confidence in judicial proceedings. The addition of the words "against an official of another State" by the Drafting Committee was welcomed as enhancing clarity. Some delegations supported the Special Rapporteur's proposal in his second report to include the expression "as far as practicable", noting that it would introduce the flexibility necessary in urgent circumstances, while caution was urged that such wording could weaken the obligation to examine immunity without delay and risked establishing undue discretion. The view was expressed that phrases such as "before initiating criminal proceedings" and "before taking coercive measures" might raise questions, given the differing practices in national systems. Clarification was sought on several issues, including the nature of the obligation to examine immunity, the thresholds to trigger said obligation, the consequences flowing from that examination, the distinct scopes of draft articles 9 and 14 and the relationship between immunity and inviolability.

27. Some delegations welcomed **draft article 10**. The notification to the State of the official was considered to be an important procedural safeguard that enhanced legal certainty and due process. Several delegations supported the proposal by the Special Rapporteur in his second report to add an exception that allowed notification to be withheld where it would compromise the confidentiality of an investigation or the proper conduct of proceedings. Other delegations cautioned that such an exception could undermine due process or dilute the safeguard of notification. It was emphasized that a more precise formulation of the

notification obligation was needed in order to avoid inadvertently weakening protections or unduly hindering legitimate investigations and prosecutions. Further consideration of the timing and content of the notification, particularly regarding ongoing investigations and confidentiality, was requested.

28. Regarding **draft article 11** on the invocation of immunity, several States emphasized that the immunity of State officials operated *ex officio* and applied regardless of its formal invocation. The view was expressed that immunity should not be left for the forum State to recognize on its own initiative, but must be formally invoked *in limine litis*. The view was also expressed that, although written invocation of immunity enhanced legal certainty, it should not be mandatory and that the term “shall” in paragraph 2 should be replaced with “should”. Further clarification was requested regarding the relationship between the automatic application and the invocation of immunity, the relationship between draft articles 9 and 11 and the legal and practical implications of invocation.

29. Several delegations considered that waiver of immunity, as contained in **draft article 12**, could never be presumed and ought to be express and in writing in order to ensure legal certainty and respect for diplomatic relations. While support was expressed for paragraph 5, some delegations proposed that a waiver could be revoked in good faith in certain circumstances, such as when new facts emerged or when changes in government or legal systems might compromise the guarantee of a fair trial in the forum State. Clarification was requested regarding the consequences and the possible limits of waiver, including the treatment of partial waivers and the exceptional circumstances in which a waiver might be considered invalid.

30. Support was voiced for **draft article 13**, as a request for information was an essential safeguard to prevent abuse. It was stated that requests for information were non-binding and further clarification regarding the timing, notification duties and interaction between States in responding to such requests, was sought. The view was expressed that the proposed removal of references by the Special Rapporteur in his second report to mutual legal assistance treaties in paragraph 3 merited consideration, given that those treaties were designed for evidence-gathering rather than clarifying immunity status. It was suggested that the Commission incorporate elements of confidentiality as a starting point for the examination of any request for information and specify preconditions or measures to be taken by the requested States while considering in good faith such a request.

31. Some delegations expressed support for the determination of immunity pursuant to **draft article 14**, viewing it as another essential safeguard to prevent abuse. It was emphasized that the determination should be undertaken by impartial authorities, preferably judicial bodies and, where possible, higher courts. The view was expressed that the identification of non-exhaustive factors in paragraph 2, together with the recognition of the role of courts in final determinations, reinforced impartiality. It was stated that the issue of waiver in paragraph 2 had already been addressed in a separate draft article.

32. Some delegations expressed support for paragraph 3, considering that it balanced the interests of the States concerned and reduced the risk of politicization and misuse of draft article 7. Clarification regarding the phrase “appropriately high level” authority in paragraph 3 was sought. It was proposed that the Commission reconsider that requirement in the light of diverse national systems, where determinations of immunity might be made at different levels and were not necessarily confined to “high-level” judicial or political authorities.

33. Concern was raised regarding the use of the phrase “before initiating criminal proceedings” in paragraph 4, with suggestions to distinguish it clearly from the timing of examination under draft article 9. Some delegations requested clarification on the scope and content of inviolability in paragraph 4, including its distinction from immunity and its applicability to officials protected by immunity *ratione materiae*.

34. The view was expressed that further details were needed on mechanisms for cooperation under **draft article 15** on transfer of the criminal proceedings and that coherence with existing extradition and mutual legal assistance regimes should be ensured. Several delegations expressed support for the fair treatment of the official under **draft article 16**, viewing it essential to safeguard justice and rights and dignity of officials. Some delegations viewed **draft article 17** on consultations as a valuable tool to promote the peaceful settlement

of disputes. It was also judged to reflect established diplomatic practice and to provide a constructive mechanism to prevent disputes from escalating. Several delegations underscored the importance of **draft article 18** on settlement of disputes, but the Commission was cautioned that any reference to judicial settlement should not circumvent the requirement of State consent, including with respect to the jurisdiction of the International Court of Justice.

3. Future work

35. Several delegations stated that they looked forward to further progress on the topic, including the development and adoption of commentaries and the completion of the second reading. While it was suggested that the Commission conclude the second reading at the seventy-seventh session, some delegations were of the view that more time was needed for careful reflection and that the Commission should comprehensively re-examine the draft articles in the light of the written and oral comments by States, as well as address the divergence in views, before finalizing its work on the topic.

4. Final form

36. A number of delegations expressed support for a treaty as the most appropriate final outcome of the work of the Commission on the topic. It was emphasized, however, that several provisions went beyond codification of international law and thus required States to be at the centre of shaping the rules through treaty negotiations. The view was expressed that the draft articles still required detailed study before they could serve as a basis for a treaty. The view was also expressed that the future of the draft articles was a question to be determined based on the content of the text adopted on second reading.

B. General principles of law

1. General comments

37. Delegations welcomed the fourth report of the Special Rapporteur ([A/CN.4/785](#)). Several considered that work on the topic contributed to clarifying the nature, scope and functions of general principles of law.

38. A number of delegations emphasized the importance of the topic and called for a careful and balanced approach. It was stressed that the work of the Commission should be firmly grounded in State practice and that undue reliance on subsidiary means for the determination of rules of international law should be avoided. Attention was drawn to the need for the analysis of diverse State practice, reflecting different legal systems, cultures and languages.

39. Several delegations emphasized that State sovereignty was a cornerstone of international law and that new obligations did not arise for States that had not consented to them. Thus, a number of delegations stated that the work of the Commission should remain within the bounds of the codification of international law. Some delegations reiterated that the foundation of the work on the topic should be Article 38 of the Statute of the International Court of Justice.

40. Regarding terminology, several delegations emphasized the need to maintain clarity between general principles of law as a source of international law and principles of international law understood as a broader taxonomy of norms. Some delegations expressed the view that the use by the Commission of the concepts of “recognition”, “identification” and “determination of the existence” of general principles of law lacked precision; the Commission was urged to differentiate those concepts clearly.

41. The view was expressed that the inclusion of a definition of general principles of law could contribute to the coherence and clarity of the draft conclusions as a whole. According to another view expressed, the fact that no definition of general principles of law was included was welcome. It was suggested that the relationship between general principles of law and peremptory norms of general international law (*jus cogens*) merited consideration, including the view that the absence of conflict with *jus cogens* constituted a requirement for the formation of general principles of law. Some delegations requested that greater attention be

given to the relevance of subsidiary means other than judicial decisions and doctrine for the determination of general principles of law. The Commission was requested to consider the inclusion of an indicative and “without prejudice” list of general principles of law.

2. Specific comments³

42. Regarding **draft conclusion 2**, a number of delegations stated that the practice of international organizations was relevant for recognition and called for further elaboration of that aspect. While some delegations considered that the reference to “community of nations” was sufficiently broad to encompass international organizations, others expressed a preference for the term “international community”. By contrast, some delegations emphasized that the recognition of general principles of law concerned mainly States and that the role of international organizations should be understood as deriving from, or reflecting, the views of their member States. Preferences were expressed for formulations referring to the “international community of States”, or for retaining “civilized nations” to maintain consistency with the Statute of the International Court of Justice. Some delegations reiterated their support for not using the term “civilized nations”. The view was expressed that recognition was carried out by States in relation to general principles of law derived from national legal systems, while international organizations could play a role in relation to general principles that could be formed within the international legal system. It was stated that recognition should follow the prior existence of a principle, rather than constituting the creation thereof. It was suggested that the Commission clearly delineate the differentiated value of the roles of the various actors in the international legal order in the process of recognition.

43. Regarding **draft conclusion 3**, several delegations expressed support for the existence of the second category of general principles of law (i.e., those that could be formed within the international legal system), on the basis that every independent legal system had the capacity to generate its own general principles. Other delegations did not support the existence of said category, affirming that only general principles derived from national legal systems fell within the scope of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice. It was stated that there was no sufficient support in State practice for the existence of the second category and that what the Commission had described as such were, in fact, principles of international law derived from treaties or customary international law, or products of judicial decisions and doctrine. It was emphasized that the second category did not constitute an independent source of law and that its inclusion in the topic was unwarranted in the absence of consensus thereon among States. Some delegations proposed the deletion of subparagraph (b) of draft conclusion 3. It was emphasized that further evidence drawn from State practice, jurisprudence and doctrine was required and that clearer examples were needed.

44. Some delegations stressed the need to clarify the distinction between the two categories and the methodology for their identification. The question was raised whether general principles formed within the international legal system could be transposed to other legal systems. Concerns were voiced regarding the use of the formulation “may be formed”, which was perceived as introducing a hypothetical category.

45. A number of delegations expressed support for **draft conclusions 4** on identification of general principles of law derived from national legal systems, **5** on determination of the existence of a principle common to the various legal systems of the world and **6** on determination of transposition to the international legal system. Some delegations emphasized that the term “common” in draft conclusion 5 should be understood as meaning broad and representative, rather than universal. The importance was stressed of ensuring geographical and substantive diversity, including linguistic diversity, in the comparative analysis. It was emphasized that the identification process should be transparent, participatory and representative. Some delegations requested clarification of the meaning and scope of the word “transposition” in draft conclusion 6. While it was emphasized that transposition was not automatic, some delegations stated that it did not require a formal act

³ References to draft conclusions 1 to 12 are to the texts adopted by the Drafting Committee on second reading. See [A/CN.4/L.1018](#).

by States. The Commission was urged to include objective criteria to be used to establish whether “transposition” had occurred. Concerns were raised as to the absence of any form of State consent in the compatibility test and the Commission was requested to clarify the circumstances under which general principles could be regarded as compatible with the international legal system.

46. While support was voiced for **draft conclusion 7** on identification of general principles of law formed within the international legal system, several delegations expressed concern regarding the potential overlap between general principles of law formed within the international legal system and customary international law. It was stressed that an insufficiently clear distinction between the two risked undermining the integrity of customary international law by lowering the threshold required for its formation. Some delegations welcomed the clarification provided by the Commission regarding the distinction, while several delegations requested the Commission to include clear, convincing and plausible examples of the second category of general principles of law in the commentary. It was suggested that, should the Commission decide to retain the second category, it should be expressly characterized as progressive development and should be subject to State consensus.

47. Concerns were raised regarding the term “intrinsic” in draft conclusion 7, which was considered to lack clarity. Several delegations stated that the methodology reflected in draft conclusion 7 did not adequately account for State consent, with some delegations expressing the view that the concept of “the persistent objector” should apply to the identification of general principles of law. Other delegations stated that the concept was incompatible with the nature of general principles of law. A number of delegations welcomed the deletion of the second paragraph of draft conclusion 7 as adopted on first reading⁴ and requested elaboration on the rationale behind the deletion in the commentary.

48. Support was expressed for **draft conclusion 8** on decisions of courts and tribunals and its alignment with the topic “Subsidiary means for the determination of rules of international law” was welcomed. A concern was raised that the distinction drawn between international and national judicial decisions might prove problematic, and it was suggested that paragraphs 1 and 2 be merged. It was also suggested that judicial decisions should be accorded greater weight than teachings in the determination of general principles of law.

49. While support was expressed for **draft conclusion 9** on teachings, concerns were raised regarding the extent to which the provision aligned with the work on subsidiary means for the determination of rules of international law. Some delegations suggested replacing “are” with “may serve as”. It was emphasized that the quality of the reasoning should constitute the most important criterion in assessing the relevance of teachings.

50. Support was voiced for the functions of general principles of law outlined in **draft conclusion 10**, and in particular the reversal of the order of paragraphs 1 and 2 to highlight the systemic and interpretative role of general principles of law. Further attention to the coherence function of general principles of law was called for. However, opposition was voiced to reversing the order of the paragraphs, as the traditional gap-filling role of general principles of law seemed to have been relegated to a secondary position. Attention was drawn to a possible tension between the gap-filling function and the absence of a hierarchy among sources. Some delegations supported the decision to replace the term “primary” with “substantive”. It was noted that the draft conclusion did not sufficiently reflect a distinction between the functions of the two categories of general principles of law.

51. Several delegations expressed support for **draft conclusion 11** on the relationship between general principles of law and treaties and customary international law, underscoring that general principles of law were not in a hierarchical relationship with treaties and customary international law and should not be treated as a subsidiary or secondary source. At the same time, it was stated that general principles of law often played a subsidiary role in practice, in particular in gap-filling and interpretative contexts, or were limited to procedural obligations. It was highlighted that any subsidiary operation of general principles of law stemmed from considerations of speciality rather than from a hierarchy among sources.

⁴ See [A/CN.4/L.982](#).

52. Regarding potential conflicts among the sources of international law, it was suggested that there should be a presumption against the existence of a conflict between a general principle of law and a rule of treaty or customary international law. Other delegations highlighted that, where a principle emanated from a treaty and overlapped with a general principle of law, the treaty rule would prevail. Questions were raised as to whether a conflict between a treaty and a general principle of law was possible in practice.

53. While several delegations expressed support for the inclusion of the new **draft conclusion 12**, on general principles of law with a limited scope of application, to accommodate the complexity of the international legal system, others expressed reservations or opposition to it, considering it incompatible with other draft conclusions. A number of delegations requested further elaboration and examples of State practice supporting the existence of general principles of law with a limited scope of application, including whether the provision would be applicable to both categories of general principles of law. It was stressed that general principles of law with a limited scope of application should be understood as operating within general international law and should not be conflated with regional customary international law. Some delegations suggested the deletion of the draft conclusion.

3. Future work

54. Delegations regretted that, owing to the liquidity crisis affecting the Organization, the Commission had been unable to advance its work on the topic as anticipated. Expectations were expressed that the Commission would be able to complete the second reading at its seventy-seventh session. Requests were made for the draft conclusions to be reassessed in the light of the comments provided by States. Some delegations suggested that States should be afforded an opportunity to reflect on the commentaries before the finalization of the work of the Commission.

4. Final form

55. Support was expressed for the final form to be draft conclusions accompanied by commentaries. A preference was also expressed for a report to be the final outcome, instead of draft conclusions. Another view was expressed in favour of draft guidelines.

C. Subsidiary means for the determination of rules of international law

1. General comments

56. Several delegations welcomed the third report by the Special Rapporteur ([A/CN.4/781](#)) and the provisional adoption of draft conclusions 1 to 13 by the Drafting Committee on first reading.⁵

57. Some delegations expressed concern that the third report expanded the scope of Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice. Several delegations stressed that subsidiary means were not sources of international law but played a valuable interpretive and evidentiary role for the identification of sources. Other delegations emphasized that the list of subsidiary means in Article 38, paragraph 1 (*d*), was non-exhaustive.

58. Some delegations commented on certain draft conclusions adopted at previous sessions.⁶ For example, regarding **draft conclusion 4** on the general criteria for the assessment of subsidiary means, delegations emphasized that the quality of the materials should be the main consideration. The importance of geographical, cultural and linguistic diversity was also highlighted. While support was expressed for the useful and open-ended list of criteria, another view was expressed that the criteria were questionable. In relation to **draft conclusion 7** on the weight of decisions of courts and tribunals, additional criteria were

⁵ See [A/CN.4/L.1019](#).

⁶ The text of the draft conclusions adopted in the previous sessions ([A/CN.4/L.985](#) and [A/CN.4/L.999](#)) was reorganized by the Drafting Committee in 2025 (see [A/CN.4/L.1019](#)).

suggested, such as the circumstances of the establishment of the tribunal, the election procedure and the independence of courts and tribunals. It was suggested that generalizations taken from isolated judgments were to be avoided.

2. Specific comments⁷

(a) Part Four – Teachings

59. Regarding **draft conclusion 9** on the weight of teachings, some delegations welcomed the inclusion of separate draft conclusions providing specific criteria to determine the weight to be given to various types of materials, as reflected in draft conclusions 7, 9, 11 and 13. Some delegations emphasized the importance using a consistent formulation for those provisions. The added value of draft conclusion 9 was questioned, since it added no elements to those listed in draft conclusion 4; the view was expressed that the commentary should provide a better understanding of the application of the general criteria in draft conclusion 4 to teachings, and a thorough assessment to identify teachings that remained relevant despite the passage of time was requested.

60. It was observed that the quality of the text was more important than the prestige of the author. It was stated that teachings should be representative and that the quality of writings of a single author should not be considered in an isolated manner, since Article 38, paragraph 1 (*d*), referred in plural to “teachings of the most highly qualified publicists of the various nations”. It was suggested that the criteria of gender and linguistic diversity were relevant for assessing the weight of teachings rather than to define them. It was also suggested that criteria specific to teachings be included among those for the assessment of such materials, such as peer validation, independence, integrity, methodological transparency, diversity and representativeness.

61. The view was expressed that the use of teachings should be approached with caution as they might focus on *de lege ferenda*. It was questioned why draft conclusion 9 included the words “as appropriate”, while draft conclusions 7 and 11 did not contain such a qualifier.

(b) Part Five – Other means generally used to assist in determining rules of international law

62. Several delegations expressed hesitation about expanding subsidiary means beyond those contained in Article 38, paragraph 1 (*d*). Some delegations considered that “teachings” under the Statute of the International Court of Justice also covered what had been listed as “other means” in the draft conclusions now contained in Part Five. The view was expressed that the use of the term “other means” would relegate such means to a secondary position in relation to “teachings”. According to another view, the reference to “means generally used” placed focus on the means that were most relevant and used by States. It was suggested that the word “generally” be deleted from the title, as “other means” were only used when jurisprudence and doctrine did not provide an answer. It was proposed that Part Five be integrated into Part Four, and that there be a new draft conclusion on the separate and dissenting opinions of adjudicators.

63. Regarding **draft conclusion 10** on expert bodies, some delegations welcomed the approach of addressing in the same conclusion all expert bodies, removing the distinction between public and private entities. Other delegations suggested clarifying the distinction between public and private expert bodies, thereby maintaining consistency with other Commission outputs. The view was expressed that reference should be made to such entities as the International Committee of the Red Cross, the Institute of International Law, the International Law Association, human rights treaty bodies, notable academic institutions and the Commission. The view was expressed that the classification was useful, as was the use of the term “pronouncement” as opposed to “decision”. The emphasis on the independence of the experts from States in the provision was welcomed.

⁷ References to draft conclusions 1 to 13 are to the texts adopted by the Drafting Committee on first reading. See [A/CN.4/L.1019](#).

64. The view was expressed that materials under draft conclusion 10 should be treated separately from teachings and that value should be given to its practical perspective. It was stated that some materials could fall into interim categories, for example between jurisprudence and doctrine. Owing to the different nature of various materials produced by expert bodies, the view was expressed that the distinction between private or State-empowered entities should be reinstated.

65. Regarding **draft conclusion 11** on the weight of the works of expert bodies, it was suggested that the quality of the work be the main criterion, while some delegations considered that the additional criteria were useful. The absence of the phrase “*inter alia*” was questioned, since it had been maintained in draft conclusion 4. Some delegations considered that the criterion in subparagraph (d) was essentially the same as the one in subparagraph (c) of draft conclusion 4. It was suggested that the importance attributed to the outcome of a given expert body, for example in the case of an individual communication to a human rights treaty body, be considered.

66. Doubts were expressed as to whether draft conclusion 11 should be maintained. The view was expressed that a distinction between public and private expert groups should prioritize independence, objectivity and methodological rigour. Support was voiced for the nuanced approach to the final outputs of the Commission, given its mandate and role. It was emphasized that the value of collective works also derived from the universality of their composition and weight should be attached to equitable representation and multilingualism. Several delegations considered that status was less relevant for the assessment than the use of the criteria in draft conclusion 4 or functional criteria, including the implementation of a scientific, objective and impartial method and independence.

67. Regarding **draft conclusion 12** on resolutions and other texts produced by international organizations or at intergovernmental conferences, several delegations expressed support for the use of such resolutions and other texts as subsidiary means and it was suggested that they could play several roles. Other delegations questioned their inclusion as subsidiary means. The view was expressed that their inclusion was not sufficiently supported by practice or jurisprudence. A number of delegations noted that the resolutions of international organizations originated from States and related mainly to the formation of law, potentially serving as evidence of State practice and *opinio juris*. It was emphasized in one view given that resolutions were based on political negotiations and compromises and not always on legal reasoning. It was highlighted that the use of resolutions as subsidiary means needed to be assessed on a case-by-case basis with regard to specific context and circumstances, including related discussions prevailing at the time of their adoption, to determine whether they embodied sufficient legal analysis.

68. Further elaboration on the distinction between the use of resolutions and of other materials as evidence of elements of rules and as subsidiary means was requested. Some delegations suggested further consideration of the advisory opinions of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* and *Obligations of States in respect of Climate Change*. It was suggested that the category of “other texts” be limited and outlined precisely, to avoid the risk of including texts that were not intended to contribute to international law, such as expressly non-binding summary reports of conferences. It was noted that, in draft conclusions 10 and 12, “may serve” and “may be used” were used inconsistently; a suggestion was made to align them or provide clarification in the commentary. The view was expressed that only documents produced independently by expert bodies within international organizations should fall within the category of subsidiary means.

69. Regarding **draft conclusion 13** on the weight of resolutions and other texts produced by international organizations or at intergovernmental conferences, some delegations suggested the inclusion of additional criteria in the commentary, such as the circumstances surrounding their adoption, the mandate of the adopting body, the adoption procedure and modalities – whether by consensus or by majority, the normative value and their relevance in the light of subsequent events and the impact on the subsequent activities of the organization concerned. Concern was expressed that many resolutions were consensus-based

and there was not sufficient information to assess the circumstances of their adoption. The view was expressed that the legal basis upon which resolutions were adopted should be an additional criterion, for example, in the case of resolutions adopted under Chapter VII of the Charter of the United Nations.

(c) Further draft conclusions proposed by the Special Rapporteur in the third report⁸

70. Regarding the **proposed draft conclusion 12** on the coherence in decisions of courts and tribunals, delegations expressed support for not including it in the draft conclusions, as fragmentation had already been addressed by the Commission. It was noted that, while fragmentation was a practical issue in the international legal system, it exceeded the scope of the topic. The view was expressed that the proposed draft conclusion contradicted draft conclusion 6 regarding the absence of binding precedent. Some delegations stressed the importance of coherence, as it strengthened the stability and predictability of international law.

71. Regarding the **proposed draft conclusion 13** on the relationship between subsidiary means and supplementary means of interpretation, some delegations welcomed its deletion and considered the text to be outside the scope of the topic. The content was perceived as more closely related to treaty interpretation and to be of limited practical value. The view was expressed that the issue was already covered by draft conclusion 6, paragraph 2. According to another view, the issue could be clarified in the commentary to draft conclusion 3 or the commentary to draft conclusion 6, paragraph 2. Some delegations expressed appreciation for the confirmation of the difference between Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice and article 32 of the Vienna Convention on the Law of Treaties.

3. Future work

72. Some delegations regretted that the Commission had been obliged to defer the adoption of the draft conclusions on first reading owing to the reduced length of its session and encouraged their adoption at its subsequent session. The Commission was requested to clearly indicate in the commentaries those draft conclusions that reflected codification and those representing the progressive development of international law. Guidance was requested regarding a potential hierarchy among materials or possible cases of contradiction between various materials that could be used as subsidiary means.

4. Final form

73. Some delegations expressed support for the approach of the Commission of preparing draft conclusions. The view was expressed that those outputs of the Commission that were not intended for adoption by States should be limited to the codification of existing law.

D. Settlement of disputes to which international organizations are parties

1. General comments

74. Delegations generally welcomed the third report of the Special Rapporteur on the topic (A/CN.4/782). Some delegations encouraged the Commission to pursue a practical, concrete and prescriptive approach to the topic, emphasizing the need for draft guidelines that could address the diverse contexts of disputes involving international organizations and support fair and equitable outcomes. The importance of grounding the work of the Commission in the practice of States was highlighted. A number of delegations considered that the distinction between non-international and international disputes drawn on the basis of the nature of the parties constituted a useful methodological choice. According to another view, the law applicable to the dispute should also be taken into account. Further study regarding the distinction between international and non-international disputes was requested.

⁸ References to draft conclusions 12 and 13 are to the texts proposed by the Special Rapporteur in his third report (A/CN.4/781) but which were later withdrawn.

A number of delegations reiterated support for the work of the Commission to cover disputes between international organizations and private parties. The Commission was called upon to clarify which draft guidelines reflected codification and which constituted the progressive development of international law.

75. The importance of promoting non-adjudicatory means to settle disputes involving international organizations and of identifying the types of disputes most suitable for such means was emphasized. Several delegations stressed the usefulness of identifying reasonable and effective alternatives to third-party adjudication, such as conciliation, mediation, ombudsman mechanisms and complaint boards.

2. Specific comments⁹

76. While support was expressed for the definition of means of dispute settlement contained in **draft guideline 2** on the use of terms, it was suggested that the means referred to in draft conclusion 2, paragraph (c), should operate sequentially, placing dialogue before litigation. Some delegations welcomed the approach reflected in **draft guideline 4** on resort to means of dispute settlement, in particular the references to “in good faith” and “in a spirit of cooperation”.

77. Regarding **draft guideline 7** on disputes between international organizations and private parties, a number of delegations called for further elaboration of the definition of “private party”. It was stressed that administrative disputes within internal justice systems should be distinguished from civil law disputes.

78. While some delegations welcomed **draft guideline 8** on resort to means of dispute settlement, others considered that “in good faith” and “in a spirit of cooperation” did not account for power imbalances in disputes between international organizations and private parties. Preference was expressed for the inclusion of robust procedural safeguards, reliance on the principle of legality and interpretations most favourable to individuals as more effective means of addressing power imbalances. It was highlighted that, where informal means were envisaged, transparency and the effective involvement of the private party in the choice of means were essential. It was underscored that the choice of means of dispute settlement should fully respect the mutual will of the parties and should not favour the preference of one party over the other. It was suggested that draft guidelines 8 and 9 should apply across the draft guidelines as a whole. At the same time, some delegations stated that generalizations concerning the relative position of the parties to a dispute should be avoided.

79. Several delegations called for further elaboration of **draft guideline 9** on jurisdictional immunity of international organizations, as it did not sufficiently address the potential tension between said jurisdictional immunity and the right of access to justice of private parties. It was emphasized that the issue merited deeper analysis, including clearer practical guidance, and that different approaches to balancing the independent functioning of international organizations and access to justice might be required on a case-by-case basis. Several delegations stressed that the privileges and immunities enjoyed by international organizations should not have the effect of depriving individuals of access to justice.

80. Reference was made to relevant jurisprudence, according to which the granting of immunity to international organizations was conditional upon the availability of reasonable alternative means of dispute resolution for individuals. The development of an additional draft guideline reflecting both respect for the privileges and immunities of international organizations and an obligation to provide appropriate remedies was called for. Other suggestions included addressing waivers of immunity and focusing on internal mechanisms.

81. It was highlighted that the jurisdictional immunities of international organizations were treaty-based and granted for the purpose of ensuring the independent performance of their functions; it was stressed that the text of draft guideline 9 should reflect the binding nature of such immunities as determined by relevant treaties. It was suggested that the draft

⁹ References to draft guidelines 1, 2, 3, 4, 5 and 6 are to the texts provisionally adopted by the Commission. See *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 10 (A/79/10)*, chap. IV. References to draft guidelines 7, 8, 9, 10 and 11 are to the texts proposed by the Special Rapporteur in his third report. See [A/CN.4/782](#).

guideline should be limited to articulating general principles and that greater clarity could be achieved through the elaboration of a definition of the privileges and immunities of international organizations.

82. With regard to **draft guideline 10** on access to justice, the view was expressed that the provision should expressly affirm the right to an effective remedy and that the aspects relating to compensation required further analysis. Some delegations stated that the provision appeared to reflect an unjustified preference for arbitration and judicial settlement and that informal means should be the object of a separate draft guideline; it was emphasized that the nature and circumstances of the dispute, as well as the freedom of the parties, should guide the choice of means. By contrast, a preference was expressed for including binding means of dispute settlement to ensure legal certainty and the clear recognition of rights and obligations. Greater clarity was requested on how dispute settlement mechanisms were to be made more widely accessible in practice.

83. While several delegations expressed support for **draft guideline 11** on dispute settlement and procedural rule of law as well as human rights requirements, and welcomed its content, others considered it unclear and expressed a preference for referring to general international law. Some delegations suggested adding references to procedural fairness, the principle of equality of arms and labour standards. A number of delegations requested clarification on the meaning of “human rights requirements”.

3. Future work

84. Several delegations regretted that, owing to the liquidity crisis affecting the Organization, the Commission had not advanced its work on the topic as originally envisaged. Some delegations expressed the expectation that the Commission would finalize the text of the draft guidelines on first reading at its seventy-seventh session.

4. Final form

85. While some delegations expressed support for draft guidelines, the view was expressed that draft conclusions were preferable. Support for the elaboration of model clauses was reiterated, while opposition to such output was also voiced.

E. Non-legally binding international agreements

1. General comments

86. Delegations welcomed the second report of the Special Rapporteur (A/CN.4/784). Delegations acknowledged the significant practical relevance of the topic, given the increasing number of non-legally binding international agreements. It was emphasized that the work of the Commission should focus on clarifying existing practice rather than on historical and theoretical aspects of the topic. Several delegations regretted that, owing to the liquidity crisis of the Organization, the Commission had not advanced its work on the topic as originally envisaged.

87. It was stated that non-legally binding international agreements were political in nature and constituted political commitments and understandings, but should nevertheless be concluded in accordance with international law and respect international law principles. It was noted that the growing use of non-legally binding agreements reflected the deepening of international cooperation. The view was expressed that non-legally binding instruments did not give rise to obligations under the principles of good faith or *pacta sunt servanda*.

88. A number of delegations shared examples of their national practice and encouraged other States to do so, with a view to providing the Commission with an empirical and representative basis for its work. The importance of geographical representation and diversity for the Commission’s work was highlighted.

2. Specific comments¹⁰

89. With respect to the purpose reflected in **draft conclusion 1** on purpose, delegations concurred that work on the topic should not be prescriptive. Caution was advised by a number of delegations so as to avoid limiting the evolution of State practice; preserving the flexibility afforded to States when concluding non-legally binding agreements was deemed essential. Some delegations expressed the view that there was a need to enhance clarity and legal certainty about the status of non-legally binding international agreements.

90. On the use of terms contained in **draft conclusion 2** on the use of terms, while some delegations were open to maintaining the term “agreement”, several delegations expressed concern regarding its use, considering it to be reserved for legally binding instruments, and some delegations expressed flexibility on the issue. Calls for the use of the term “instrument” or “material” instead were reiterated. The Commission was encouraged not to treat the distinction between “agreements” and “instruments” as a purely semantic exercise, emphasizing that conceptual clarity was essential. Further consideration of the use of the term “agreement” in the topic was suggested, in particular in the light of the Vienna Convention on the Law of Treaties and its *travaux préparatoires*. A suggestion was made to retain the term “agreement”, without prejudice to a final decision on it once all draft conclusions had been discussed. It was stressed that the draft conclusions should not cover unilateral acts or statements.

91. Regarding the scope of the topic under **draft conclusion 3** on scope, support was expressed for covering only written non-legally binding international agreements concluded between States, between States and international organizations and between international organizations, as well as agreements entered into by sub-State authorities, to the extent that they had been adopted at international level. Clarification was requested as to the meaning of “sub-State authorities” and the Commission was urged to exercise caution in its study of the matter.

92. Several delegations expressed support for the “without prejudice” clause contained in **draft conclusion 4**, which specified that the draft conclusions were without prejudice to any rules or practices applicable at the national level in relation to non-legally binding international agreements, as being useful. A suggestion was made to include a reference to the rules and practices of international organizations in the provision.

93. A number of delegations expressed support for **draft conclusion 5** on the assessment of whether an agreement was legally binding or not, while emphasizing that further discussion on the indicators relevant for distinguishing between treaties and non-legally binding international agreements was desirable. The importance of the use of objective indicators for said assessment, such as the terms used, the form, the circumstances of the conclusion of the agreement and subsequent conduct, was emphasized. Several delegations stressed that the determination of whether an international instrument was non-legally binding depended primarily on the intention of the parties, which remained critical, and whether the parties at the time of concluding the instrument had intended not to create rights and obligations of a legally binding nature.

94. Some delegations expressed support for including a list of indicators in the text of the draft conclusion, while others suggested leaving examples of such indicators for the commentary to avoid prescriptive and exhaustive lists in the draft conclusions themselves. It was underscored that any list of indicators proposed to distinguish between treaties and non-legally binding agreements ought to be illustrative and that a case-by-case approach should be applied.

95. The analysis by the International Court of Justice in *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, when determining whether legal titles, treaties and conventions had the force of law, was recalled. The view was expressed that the absence of ratification, registration or publication should not in itself affect the binding nature of an agreement. It was suggested that the Commission’s work should clarify,

¹⁰ References to the draft conclusions are to the texts proposed by the Special Rapporteur in his second report. See [A/CN.4/784](#).

without being overly prescriptive, the criteria for distinguishing treaties from non-legally binding agreements, as well as the possible consequences of the latter. In that connection, the Commission was encouraged to focus on the practical challenges that States encountered when distinguishing between binding and non-binding instruments. A suggestion was made to use “participants” rather than “parties to the agreement” throughout the work on the topic.

96. Regarding **draft conclusion 6** on the existence of an express indication, several delegations agreed that the fact that all the parties to an agreement expressly indicated that it was or was not legally binding under international law was sufficient to identify their intention. The view was expressed that it was necessary to add that such express indication was only “generally” sufficient. It was highlighted that the indication of the intention did not need to be in the text of the agreement itself and could be formulated elsewhere. Some delegations emphasized that the absence of an express indication did not determine the nature of the agreement, and clarification of the point in the commentary was requested. The view was expressed that the elements indicative of intention should be studied on a case-by-case basis. It was further suggested that the content of draft conclusion 6 be dealt with in the commentary.

3. Future work

97. The Commission was urged to take a careful approach to the topic and conduct a detailed analysis of State practice. The Commission was cautioned to avoid undue haste in its consideration of the topic. The Commission was encouraged to ensure that its work was aligned with the jurisprudence of the International Court of Justice, as well as the work of other institutions on the matter. A concern was raised regarding the intention of the Special Rapporteur to submit a third report for the seventy-seventh session, given that the Commission, and thus States, had not had the chance to meaningfully engage with the substance of the second report.

4. Final form

98. While support was expressed for draft conclusions, some delegations expressed a preference for a different output, as draft conclusions were more usually used for work on the sources of international law. Draft guidelines or a combination of draft conclusions and draft guidelines were suggested as the more appropriate final forms. The Commission was urged not to produce an outcome that would result in the creation of new obligations for States, even indirectly, where none was intended.

F. Prevention and repression of piracy and armed robbery at sea

1. General comments

99. Delegations generally expressed appreciation for the work of the Commission on the topic. Several delegations welcomed the note submitted by the Special Rapporteur ([A/CN.4/786](#)) and the clear methodological framework proposed therein. Some delegations also welcomed the establishment of a working group at the seventy-sixth session. The hope was expressed that the Commission would be able to dedicate adequate time to the topic at its seventy-seventh session. A number of delegations expressed appreciation for the work of the previous Special Rapporteur on the topic.

100. Delegations generally condemned acts of piracy and armed robbery at sea, emphasizing the need for international cooperation. The particular impact of piracy in various regions of the world was highlighted. Some delegations pointed to examples of relevant practice by regional organizations and urged the Commission to take those examples into account. Appreciation was expressed for the recognition by the Special Rapporteur of regional efforts.

101. Delegations generally noted that the United Nations Convention on the Law of the Sea was the starting point for the work on the topic. Several delegations reiterated the importance of ensuring that the work of the Commission was consistent with and complementary to the Convention, and a careful approach was encouraged. A number of

delegations underscored the importance of maintaining the freedom of navigation and a balance between the rights of flag States and coastal States. The Commission was encouraged to focus on addressing emerging challenges. The need to avoid the duplication or alteration of existing frameworks was emphasized. The relevance of other instruments, including treaties dealing with terrorism and international crimes, was highlighted. It was stressed that the Commission should avoid relying on controversial or non-universally recognized practice in interpreting existing legal frameworks.

102. Delegations highlighted the evolving threats of piracy and armed robbery at sea to maritime security and the freedom of navigation. A number of delegations emphasized the importance of preventive measures to address the threats of piracy and armed robbery at sea. The need for States to take effective national legislative, administrative and judicial measures was stressed, as was the need to strengthen national legal frameworks and align them with States' international obligations. Some delegations underscored the importance of a flexible international framework that was implementable in the various national legal systems. Several delegations stressed the need for enhanced global and regional cooperation and coordination, improved information-sharing and increased capacity-building.

103. A number of delegations recalled the importance of distinguishing between piracy and armed robbery at sea, which took place in different maritime zones and were subject to different legal regimes. The Commission was encouraged to consider whether the elements of the definitions of the respective crimes merited further clarification. A desire for guidelines to address armed robbery at sea was expressed, and the importance of both the rights and responsibilities of coastal States in that respect was underscored. It was recommended that armed robbery at sea be addressed with reference to existing national laws and practice.

104. Some delegations called for the clarification of the scope of universal jurisdiction and the application of the obligation to prosecute or extradite with respect to the topic. The view was expressed that piracy was the only crime in respect of which the existence of universal jurisdiction under customary international law was undisputed. The Commission was encouraged to explore the implications of Article 51 of the Charter of the United Nations on the use of force at sea and self-defence, incorporating references to the respect for human rights, international humanitarian law and effective accountability mechanisms. It was observed that the deployment of armed security personnel on merchant vessels gave rise to questions of international law concerning jurisdiction, liability and the right of innocent passage.

2. Future work

105. A number of delegations expressed support for the proposed schedule of work set out in the note by the Special Rapporteur and expressed appreciation for the identification of key points of law therein that could serve as major themes of the Commission's work. The Special Rapporteur was commended for his intention to focus on the most important practical legal issues. Several delegations stressed the importance of building on the draft articles already provisionally adopted by the Commission on the topic. According to another view, the Commission should revisit those draft articles. Support was expressed for a more streamlined timeline for the future work, in view of the liquidity crisis of the Organization.

106. The Commission was urged to identify and clarify issues of common concern, with a focus on matters that would be of most assistance to States. For example, some delegations encouraged the Commission to elaborate on elements of the existing legal framework in the light of contemporary challenges. Other delegations suggested that the Commission consider the meaning of the terms "prevention" and "repression", as well as the extent of the duty to cooperate. It was recommended that the Commission address primary issues of prevention, repression and jurisdiction before considering secondary issues.

107. A number of delegations expressed support for the recommendation of the Special Rapporteur to address emerging issues, including the use of new technologies, such as autonomous vehicles and cyberattacks, as well as the use of private armed security personnel on merchant ships. According to another view, it would not be useful for the Commission to consider the use of uncrewed aerial vehicles, maritime autonomous vehicles and cyberattacks. The need to address operations that might launch from land and the use of force

at sea and liability for the wrongful seizure of a vessel by a State was underscored. The need to clarify the legal basis for naval operations by States and regional organizations was highlighted. The Commission was encouraged to study issues of humanitarian assistance to, and the human rights of, victims. It was suggested that the transfer of suspected offenders and their rights also be addressed.

3. Final form

108. The Commission was encouraged to decide on the final form; while support was expressed for continuing to develop draft articles, some delegations preferred other forms, including a report, draft guidelines or draft conclusions. The development of model clauses intended for incorporation in regional agreements was also proposed. The need for a focused and practice-oriented outcome was stressed.

G. Succession of States in respect of State responsibility

1. General comments

109. Several delegations welcomed the establishment of a working group and the appointment of Mr. Bimal N. Patel as its Chair, and expressed appreciation for his draft report (A/CN.4/L.1004). The view was expressed that the draft report presented a clear view of the difficulties in the continuation of the work of the Commission on the topic. Others expressed regret that the Commission had lacked the time to consider the topic fully at its seventy-sixth session.

110. The importance and complexity of the topic were underscored. It was emphasized that the topic remained of real concern for some States. The need for clear and fair rules on the succession of States in respect of State responsibility was highlighted. The primacy of agreements between the States concerned regarding State succession in respect of State responsibility was emphasized. The need for mechanisms to promote peaceful settlement of disputes in the context of succession of States was underscored. The importance of distinguishing between the transfer of responsibility as such and the transfer of rights and obligations of a predecessor State arising from its responsibility was recalled.

111. Several delegations recalled the methodological difficulties the Commission had faced, in particular the scarcity and inconsistency of State practice. Some delegations noted that State practice in the field often reflected a case-by-case approach. The importance of maintaining consistency with the prior work of the Commission was also stressed.

2. Future work

112. Some delegations took note of the expectation of the Chair of the Working Group that the Commission would conclude its work on the topic at its seventy-seventh session. Several delegations expressed their support for the decision of the Commission to conclude the work on the topic, while others reiterated their disappointment that work would be discontinued after the significant efforts made by the Commission. In terms of another view, the finalization of the draft guidelines already provisionally adopted by the Commission was feasible and the decision of the Commission to no longer pursue its work on the topic reflected a departure from its normal practice.

3. Final form

113. The Commission was encouraged to reflect on the limitations and challenges it faced in its final report. It was also requested to incorporate work already undertaken on the topic into the report. Some delegations expressed the view that general guidelines would be useful. It was emphasized that the final report should not create the false impression that the Commission would eventually continue work on the topic. A number of delegations stated that the work of the Commission would be useful guidance for States, retain practical and academic value for the future and serve as a point of reference.

H. Other decisions and conclusions of the Commission

1. Future work of the Commission

114. A number of delegations welcomed the inclusion of the topics “Compensation for the damage caused by internationally wrongful acts” and “Due diligence in international law” in the programme of work and the appointment of Mr. Mārtiņš Paparinskis and Ms. Penelope Ridings, respectively, as Special Rapporteurs. Some delegations questioned whether adding new topics was appropriate, in view of the existing workload of the Commission and the liquidity crisis of the Organization.

115. Regarding the topic “Compensation for the damage caused by internationally wrongful acts”, several delegations encouraged the Commission to build on its previous work, in particular the articles on responsibility of States for internationally wrongful acts; it was considered important to develop mechanisms for the implementation of articles 31 (reparation) and 36 (compensation). The Commission was encouraged to study questions pertaining to the quantum of compensation and to whom compensation was owed. It was recalled that the award of compound interest had been criticized by several States in the context of the United Nations Commission on International Trade Law, and the International Law Commission was encouraged to exercise extreme caution in that regard. It was urged to focus on codifying rules on the basis of State practice.

116. Concerning the topic “Due diligence in international law”, the suggestion by the Special Rapporteur to clarify the legal character, scope and content of due diligence was welcomed. The view was expressed that a thorough study of due diligence would be useful in various fields of international law, particularly environmental and cyberlaw. It was suggested that the obligation to prevent significant harm to the environment and to prevent harmful acts by non-State actors in territory occupied by a State were within the scope of the topic, and the Commission was encouraged to address potential due diligence obligations of non-State actors. The view was expressed that there was not currently sufficient support for the claim that there existed a general obligation of due diligence that applied to a State’s conduct, outside of those primary obligations for which it was the standard of conduct. The importance of considering the *opinio juris* of States was highlighted. Support was expressed for the final form of the work on the topic being draft principles.

117. Several delegations welcomed the inclusion of the topics “The principle of non-intervention in international law”, “Identification and legal consequences of obligations *erga omnes* in international law” and “Legal aspects of accountability for crimes committed against United Nations personnel serving in peacekeeping operations” in the long-term programme of work.

118. In relation to the topic “The principle of non-intervention in international law”, it was stated that there remained uncertainty as to the scope of the principle and that its elaboration by the Commission would greatly contribute to the development of international law. The importance attached in the syllabus to the application of the principle in cyberspace was commended, and the reference to the use of unilateral coercive measures as a means of intervention was welcomed. It was emphasized that an extremely careful, impartial and balanced approach was required. The Commission was encouraged to consider the likelihood of a consensual outcome before pursuing the topic. The view was expressed that it would be preferable to allow States to continue to develop and clarify their practice before the Commission studied the topic.

119. Regarding the topic “Identification and legal consequences of obligations *erga omnes* in international law”, some delegations highlighted the importance of developing criteria and methodology for identifying said obligations. The value of clarifying the difference between interdependent obligations, obligations *erga omnes partes* and obligations *erga omnes* was underscored. Interest was expressed in the examination of obligations *erga omnes* under general international law and, while support was expressed for the exclusion of countermeasures from the scope of the topic, the Commission was also encouraged to clarify the law on countermeasures in respect of its topics to the fullest extent possible. It was suggested that the Commission should not attempt to establish an exhaustive list of obligations *erga omnes*. The view was expressed that future work on the topic would

complement the Commission's work on "Peremptory norms of general international law (*jus cogens*)"; the challenges faced by the Commission on that topic were recalled. The view was expressed that draft conclusions would be the most appropriate final form of the output of the topic.

120. Regarding the topic "Legal aspects of accountability for crimes committed against United Nations personnel serving in peacekeeping operations", some delegations questioned its inclusion on the programme of work, stating that it fell outside the mandate of the Commission. It was observed that many of the challenges in the area were the result of enforcement difficulties, rather than the legal framework. The Commission was urged to avoid relying on the practice of regional organizations, since the scope of the topic was limited to the United Nations. The view was expressed that proposed draft guidelines would clarify the application of international law, enhance cooperation and improve the protection of peacekeeping personnel.

121. A number of delegations reiterated that the Commission should be guided in its selection of topics by the needs and priorities of States and that topics needed to be at a sufficiently advanced stage in State practice. Several delegations encouraged the Commission to consider its programme of work carefully, and the need to keep the number of topics manageable for both the Commission and States was stressed. Increased dialogue between the Commission and the Sixth Committee regarding topics that should be included in the long-term programme of work was called for.

122. Suggestions were made for the Commission to include the topics "Protection of critical undersea infrastructure" and "The question of ships without nationality or operating under false flags" in its programme of work. It was also proposed that the Commission focus on topics related to international investment law. Of the topics already on the long-term programme of work, the Commission was encouraged to include the topics "Jurisdictional immunity of international organizations", "Protection of personal data in transborder flow of information" and "Evidence before international courts and tribunals" in its programme of work.

2. Programme and working methods of the Commission

123. Delegations expressed their appreciation for the work of the Commission, stressing its important role in the progressive development of international law and its codification. Delegations generally regretted that the length of the seventy-sixth session had had to be reduced from twelve to five weeks, owing to the liquidity crisis of the Organization, and emphasized that the reduction of the session should not be seen as a precedent. While a number of delegations congratulated the Commission on the progress made, several delegations noted with concern the impact of the reduction on the Commission's ability to proceed with its programme of work and its plans for the current quinquennium. Several delegations highlighted that the Organization's response to the liquidity crisis should not have an impact on the Commission's work disproportionate to that on other United Nations bodies. Several delegations questioned the appropriateness of reducing the length of the session without prior consultation with Member States. A number of delegations emphasized the importance of ensuring the availability of adequate resources for the Commission to conduct its work, as mandated by the General Assembly. A suggestion was made for the insulation of the Commission's programme budget from that of the Office of Legal Affairs more generally, and the Commission and the Secretariat were encouraged to explore measures to reduce costs.

124. The need for a sufficiently long session to allow for two parts, to facilitate preparations by the Secretariat and the efficient consideration of all topics, was stressed. Several delegations expressed concern that the webcasting of plenary meetings was still discontinued, which hindered their ability to engage with the Commission's work. A number of delegations noted the adverse impact the shortened session had had on the Sixth Committee's own work.

125. The Working Group on methods of work and procedures was encouraged to consider whether there were any other changes to the working methods that could assist if future sessions were also reduced for financial reasons. The usefulness of providing an executive summary of the report of the Commission to delegations in their preparation for the Sixth Committee debate was highlighted.

126. The importance of gender parity among the Commission membership was once again underscored. The need to ensure geographical balance in the work of the Commission, including in the selection of Special Rapporteurs, was reiterated. Support was voiced for the Trust Fund on assistance to Special Rapporteurs of the International Law Commission and matters ancillary thereto, established by the General Assembly in resolution 77/103 of 7 December 2022. Support for the International Law Seminar was reiterated.

127. The importance of enhancing the dialogue between the Commission and the Sixth Committee was emphasized and several delegations expressed support for the Commission holding the first part of its seventy-seventh session in New York. According to another view, the Commission should hold its entire session in Geneva, in view of the relative costs. Some delegations stressed the importance of cooperation between the Commission and regional international law bodies and commissions.

128. A number of delegations reiterated their call for the Commission to continue to take the views and concerns of States into account, including those expressed in the Sixth Committee. The Commission was requested to clearly distinguish in the outcomes of its work between provisions reflecting the codification of international law and those reflecting its progressive development. Several delegations emphasized that, whether engaging in codification or progressive development, the Commission should base its work on State practice and *opinio juris*; the Commission was once again urged to reflect the practice of States and *opinio juris* from all regions in its work and to consider the diversity of legal traditions. A more inclusive approach in its work, including linguistic diversity of the sources used in the outcomes of the Commission, was called for. The importance of multilingualism was stressed.

129. The Commission was encouraged to prioritize quality and balance in its outputs over the speed with which those outputs were produced. It was suggested that the Commission might strengthen its role by carefully considering its programme of work, including whether it might focus on fewer topics. The importance of taking decisions by consensus in the Commission was underscored.

III. Topics on which the Commission completed work at its seventy-sixth session

Sea-level rise in relation to international law

1. General comments

130. Delegations welcomed the adoption of the final report of the Study Group on the topic (A/80/10, annex I) and expressed appreciation to the Co-Chairs of the Study Group and the Commission. Several delegations commended the timeliness of the work of the Commission and appreciated the clarity and guidance provided in the final report. Delegations further welcomed the references to the final report in the advisory opinion of the International Court of Justice on *Obligations of States in respect of Climate Change*.

131. A number of delegations reiterated that climate change-related sea-level rise posed an existential threat to small island developing States, archipelagic States and low-lying coastal developing States. It was stated that sea-level rise had direct implications for fundamental principles enshrined in the Charter of the United Nations, including the maintenance of international peace and security. Several delegations noted that sea-level rise disproportionately affected those States that were least responsible for its causes.

132. Several delegations noted that international law was only part of a broader response to sea-level rise, which included the evolving scientific understanding of climate change. Reference was made to political declarations by groups of States, including the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise of the Pacific Islands Forum, the Declaration on Sea-Level Rise and Statehood of the Alliance of Small Island States, the 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise of the Pacific Islands Forum and the Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-Level Rise and Statehood. Some delegations referred to the work of the General Assembly, including the high-level plenary meeting on sea-level rise to be held in September 2026.

133. Some delegations welcomed that the conclusions of the final report were descriptive rather than normative. In terms of another view, the Commission could have presented other types of outputs, including a framework convention on sea-level rise, or prepared a set of draft guidelines with commentaries thereto. It was suggested that the Commission should not have excluded the consideration of questions of causation, responsibility and liability, and that the possible impact of sea-level rise on international maritime routes affecting landlocked States should have been studied.

2. Specific comments

(a) Law of the sea

134. A number of delegations welcomed the conclusion that, once baselines and maritime zones were established in accordance with the United Nations Convention on the Law of the Sea, there was no obligation under the Convention to modify them based on variations in a coastline due to sea-level rise. Several delegations emphasized the importance of preserving baselines and boundaries as an essential safeguard for the maintenance of international peace and security. It was reiterated that the principle of *rebus sic stantibus* did not apply to maritime boundary delimitations, in accordance with the Vienna Convention on the Law of Treaties. The view was expressed that the lack of an obligation to update navigational charts under the United Nations Convention on the Law of the Sea was without prejudice to the need to update said charts as frequently as necessary for the purposes of the safety of navigation.

135. Delegations emphasized the fundamental role of the Convention and noted that any responses to sea-level rise ought to be consistent with it. While several delegations were of the view that provisions of the Convention generally reflected customary international law, others recalled that the Convention was not universally ratified and that the Study Group should not have overlooked other relevant sources of international law. It was stated that existing legal instruments, in particular the Convention, must be interpreted in a contemporary manner. The need for legal stability, predictability and certainty, equity, balance of rights and obligations, protection of rights to natural resources and climate justice, and the sovereign equality of States, were emphasized by delegations within the context of sea-level rise.

136. A concern was expressed that sea-level rise could be used to justify physical responses that would legitimize artificial islands or land reclamation. It was noted that the final report did not refer to historical rights. Some delegations referred to the principle that “the land dominates the sea”, while the view was expressed that that principle was no longer applicable in the context of sea-level rise.

(b) Statehood

137. A number of delegations expressed support for the continuity of statehood in the case of States whose land surface might be totally or partially submerged or rendered uninhabitable by rising sea levels. Several delegations emphasized the importance of the continuity of sovereignty, international legal personality and membership in international organizations, and some delegations noted the relevance of the principles of sovereign equality of States, territorial integrity, permanent sovereignty over natural resources and the right of peoples to self-determination. It was stated that the continuity of statehood was

grounded in the right of States to preserve their existence and that States particularly affected by sea-level rise were entitled to take the measures available to them under international law. Some delegations considered that the Convention on the Rights and Duties of States reflected customary international law, while noting that the impact of sea-level rise on statehood was not addressed therein.

138. The importance of consultations with the populations concerned on possible solutions to sea-level rise was underlined. It was emphasized that affected peoples could not be deprived of their collective identity, their political status or the continuity of the State without their consent. It was stated that the population of the affected States would continue to enjoy the right to live in or return to the area within its internationally recognized boundaries. In terms of another view, linking sea-level rise with the right of peoples to self-determination constituted an expansive interpretation of the scope of that right, since it could only be exercised by peoples under colonial rule or foreign occupation.

139. Several delegations referred to the finding of the International Court of Justice in *Obligations of States in respect of Climate Change* that, once a State was established, the disappearance of one of its constituent elements would not necessarily entail the loss of statehood. Others stated that practice did not yet support a presumption or principle of the continuity of statehood. Concerns were raised that it was unclear whether, for the Commission, the continuity of statehood reflected a presumption or a principle. Some delegations stated that the Commission should have engaged in a more robust analysis of the jurisprudence on statehood.

140. The importance of international cooperation was emphasized and, while some delegations referred to international cooperation on issues related to sea-level rise as a principle, others described it as a duty. It was noted that the Commission did not clarify how the duty to cooperate could generate specific legal obligations to provide tangible assistance to States to adapt to, or mitigate, the effects of the loss of territory. Reference was made to the recent practice of States on the issue, including the conclusion of international agreements on the continued recognition of statehood.

(c) Protection of persons

141. Several delegations reiterated that existing legal frameworks were fragmented and general in nature and called for the development of specific legal mechanisms to safeguard persons displaced by sea-level rise. Some delegations commended the Study Group for identifying in the final report elements for the possible legal protection of persons. The importance of combining rights-based and needs-based approaches was underlined, as was the need for global cooperation and solidarity, including technical and financial assistance, relocation mechanisms, the role of equity and legal stability.

142. A number of delegations emphasized that States had a duty to respect, protect and fulfil their human rights, including civil, political, economic, social and cultural rights. Several delegations emphasized the importance of preventing the loss of nationality and statelessness and preserving cultural heritage. It was highlighted that the continuity of statehood was essential to that end and reference was made to the principle of *non-refoulement*. Several delegations stressed that human dignity should be a guiding principle in the context of sea-level rise.

143. According to some delegations, international cooperation ought to be guided by the principle of common but differentiated responsibilities of States and their respective capacities. It was emphasized that obligations should not impose a disproportionate burden on developing and coastal States. The finding of the International Court of Justice in *Obligations of States in respect of Climate Change*, that the duty to cooperate in the context of sea-level rise required States to achieve equitable solutions, was recalled.

144. The view was expressed that the subtopic of protection of persons could have been elaborated upon in further detail. The Commission was encouraged to consider the subtopic through traditional methods of work, such as developing a set of draft principles or guidelines that could inform the development of legal and practical solutions by States. Some delegations noted the close link between the subtopic and the upcoming negotiations to conclude a treaty on the protection of persons in the event of disasters.

(d) Cross-cutting issues

145. A number of delegations welcomed the identification of certain foundational principles relevant to all subtopics. Several delegations underlined the importance of the cross-cutting issues of legal stability, certainty and predictability, the preservation of existing rights, the protection of human dignity, the right of peoples to self-determination, permanent sovereignty over national resources, equity and solidarity, and international cooperation. The principle of common but differentiated responsibilities and the principle of respective capabilities were mentioned. It was stated that the legal status in international law of the cross-cutting nature of the principles of legal stability, certainty and predictability was not entirely clear.

146. Several delegations emphasized the need for international cooperation when addressing sea-level rise, noting that it was a principle of international law contained in a number of instruments. The findings of international courts and tribunals supporting the interpretation of the duty to cooperate to include capacity-building, funding support, technology transfer and the sharing of scientific knowledge were recalled. Some delegations emphasized that international cooperation was required to preserve culture, cultural heritage, identity and dignity and to meet the needs of persons and communities affected by sea-level rise.

(e) Possible ways forward

147. Some delegations expressed support for the drafting of an interpretative statement, as well as the adoption of legally binding and non-binding instruments bilaterally, regionally and internationally. Other delegations considered that amendment of existing instruments was to be preferred to adaptive interpretation thereof, as the latter might risk altering the original intention for certain rights and obligations or undermining the carefully negotiated consensus where sea-level rise had not been originally considered.

148. The need to strike a balance between preserving the integrity of existing legal frameworks and the imperative to respond to practical constraints was highlighted. It was suggested that solutions should take into account the right of peoples to self-determination and the human rights of the affected populations. It was further suggested that the Sixth Committee should continue discussing possible ways forward following the conclusion of the work of the Study Group.¹¹

¹¹ The General Assembly, in resolution 80/164 of 15 December 2025, recognized the valuable contribution of the Commission's work to enhancing the understanding and clarification of issues of international law arising in connection with sea-level rise, and invited States to reflect on it in relation to the ongoing work of the General Assembly in 2026 and, in that regard, and without setting a precedent, to express further views on the legal aspects of the topic during the eighty-first session of the Assembly, during the consideration of the report of the Commission on the work of its seventy-seventh session.