

COMMITTEE ON INTERNATIONAL LAW AND SEA LEVEL RISE

WORKING SESSION

Monday, 20 June 2022, 11.30 am

Chair: Antonios Tzanakopoulos (United Kingdom)

The Chair, Antonios Tzanakopoulos (United Kingdom) elaborated that the session will be discussing the Interim Report. Further work on this topic will lead to the final Report expected in 2024. He warned that this is a critical time for the work of the Committee. He introduced the Chair of the Committee (Professor Davor Vidas) and the Co-Rapporteur (Professor Elisa Fornalé) who were going to introduce the Interim Report in the first 45 minutes of the session. Professor Antonios Tzanakopoulos passed the floor to Professor Davor Vidas, the Chair of the Committee, for an introduction to the work of the Committee and its 2022 Report.

Professor Davor Vidas (Norway) noted his great pleasure to attend the Conference in person and to have 18 members of the Committee (out of 45 in total) present. He presented the apologies for the absence of Co-Rapporteur Professor David Freestone, who was unable to attend the Lisbon Conference, and welcomed new members, Professor Giuseppe Nesi (Italy) and Professor Frida Armas Pfirter (Argentina) who attended the session in person. He advised that the Committee met in person for the last time in December 2019 in Madrid. Like all other Committees, the Committee on International Law and Sea Level Rise was affected by restrictive measures due to COVID-19 in the past two and a half years. Nonetheless, the Committee did manage to maintain an active programme during that period through online zoom sessions, five of which were held during the course of 2020 and 2021. Professor Vidas further advised that he intended to provide a presentation of the Interim Report which had been submitted, in the present draft version, at the end of April 2022 to the ILA Headquarters, for the purpose of being discussed at the 2022 Lisbon Biennial Conference of the ILA.

Professor Vidas set out the background and context of the Report.¹ He reminded the meeting that the Committee also presented an Interim Report at the Johannesburg Conference in 2016 (the first interim report) and that two years later at the Sydney ILA Conference in 2018, the Committee had presented a comprehensive report and, based on

¹Available at:

https://www.ila-hq.org/images/ILA/docs/ILA_2022/Int_Law_Sea_Level_Rise_Interim_Report_2022.pdf.

it, two ILA resolutions were adopted:² ILA Resolution 5/2018, on maritime limits and boundaries in relation to sea level rise, and ILA Resolution 6/2018, which also included the ‘Sydney Declaration on Principles on the Protection of Persons Displaced in the Context of Sea Level Rise’. The first phase of the work of the Committee was concluded with the Sydney Report and two ILA Resolutions. The second phase of the work started in 2019, and it is scheduled to be completed in 2024, as the Committee will be presenting its final Report at the next, 81st, Biennial ILA Conference to be held in Delphi (Greece) in that year.

With respect to the structure of the work of the Committee, Professor Vidas explained the primary focus of the two phases/stages into which the Committee had decided to divide its work in order to respond comprehensively to its mandate. The mandate was to: *i*) study the possible impacts of sea level rise under international law, **and** to *ii*) develop proposals for the progressive development of international law in relation to the impacts of sea level rise. He further advised that the Committee’s proposals are not simply oriented towards proposals *de lege ferenda*. The Committee has also made proposals regarding interpretation of current international law, thus the *lex lata* aspect is indeed also very important in the work and proposals of the Committee. This is notwithstanding the fact that the issues that the Committee is addressing, namely, the challenges posed by sea level rise, are largely future-oriented and closely related to scientific predictions.

Professor Vidas explained that the structure of the work of the Committee had been adopted at the Washington DC Biennial ILA Conference in 2014 and is defined by three main issue-areas of international law in relation to the challenges posed by sea level rise: (1) law of the sea; (2) forced migration and human rights; and (3) issues of statehood under international law.

At the same time, while agreeing to focus on those three issue-areas, the Committee had also agreed to divide the work into two main phases. The Committee did not plan to work on all those issue-areas without distinguishing the time perspective. It is essential to look at the level of gravity of challenges, as they may be emerging in either a short-term, mid-term or longer-term perspective. In accordance with the latest IPCC assessments, this division has to do with decades rather than centuries.

In the first phase of the work (until 2018), the Committee was focused on priority areas in a relatively shorter-term perspective. This involved two parallel streams of study: one on the law of the sea issues of maritime limits and boundaries, and the other on migration and human rights. With respect to both, some rather important and pressing international law issues arise.

² ILA Resolutions 5/2018 and 6/2018, in their English language original and French translation, are published in: ILA, *Report of the Seventy-eighth Conference* (ILA: London, 2019), at 29–40; also available at: <https://www.ila-hq.org/index.php/committees>.

From 2019, in this second phase of its workplan (until 2024), the Committee's primary focus is on issues emerging in the mid- to longer-term perspective. However, Professor Vidas added that it is not always possible to make such types of distinctions mechanically. In fact, the Interim Report also contains some continuation of the studies done in the first phase because in the last few years there have been quite dynamic developments in State practice in some of the fields studied by the Committee, not least regarding the law of the sea issues of maritime limits and boundaries.

Professor Vidas noted that the main focus of the Committee's study in Phase Two (current work) is on the question of statehood. Before the partial or complete inundation of State territory, various issues will be prompted by the gradual decline of the population, and, in some cases, certain territories may become uninhabitable. Those are all mid to longer-term issues, which means that the Committee, in terms of time-scale, is working on issues likely to arise by the mid-century or later.

Against this background, Professor Vidas explained that two substantive parts of the Interim Report will be presented before the floor is opened for discussion. He was to present Part II on the law of the sea issues, and Professor Elisa Fornalé would present Part III, which is on statehood and the rights of affected populations. Professor Vidas also highlighted that the purpose of the open session is not to reopen the internal discussions of the Committee (which is to hold its closed session later the same day), but primarily to seek views and reactions from those who are not within the Committee. He welcomed discussion on any issues the attendees may wish to discuss.

Professor Vidas began his presentation of Part II by referring to the valuable contributions of Professor David Freestone, Co-Rapporteur, with whom he worked jointly on that part of the report, and stated that his presentation is on Professor Freestone's behalf too. He also emphasized that Part II is essentially the follow-up of the previous Report of the Committee and of ILA Resolution 5/2018.

That ILA Resolution noted that the Committee has presented "*evidence of the emergence of State practice particularly in the South Pacific region*"³. That practice was regarding the intention of those States to maintain their baselines and limits of maritime zones notwithstanding physical coastline changes brought about by sea level rise. At that time, the Committee had the opportunity to analyse the development of State practice as it became manifested initially from around 2010 until the mid-2018. Later, from the second half of 2018 and until the end of 2021, the Committee was able to follow the rather rapid development of State practice during those past three and a half years. Against that background, Professor Vidas then moved to consider some key aspects of ILA Resolution 5/2018.

³ ILA Resolution 5/2018, p. 1. Available at: https://www.ila-hq.org/images/ILA/Resolutions/ILAResolution_5_2018_SeaLevelRise.pdf.

He started with highlighting the fact that the Committee's proposal reflected in Resolution 5/2018 was about the interpretation of existing law and was not a proposal for new law. The Committee has not proposed a change of the UN Convention on the Law of the Sea (LOSC) nor had it ever intended to do so – certainly not while the issues discussed are related to a relatively shorter-term perspective. Professor Vidas observed that this aspect might occasionally have been misunderstood so that the Committee's proposals have been interpreted as being *de lege ferenda* oriented. He also added that the underlying reasons for those proposals were also clearly stated in that Resolution. Those underlying reasons have to do with facilitating orderly relations between States, indeed facilitating the avoidance of conflict and upholding legal certainty and stability. This is something that certainly should not be seen as being *de lege ferenda* when looking at the ultimate objectives of the LOSC, even starting from its preamble. The development of State practice – which the Committee has been following and analysing since autumn 2018 – could be understood in that light: regarding the distinction between the proposals as being *de lege ferenda*, or oriented to the interpretation of international law. In general, what the Committee has been following in the past decade or so is the emergence of practice *specifically* related to sea level rise. This State practice has so far been concerned primarily with law of the sea issues of maritime limits and boundaries, and in that respect it differs from earlier periods of State practice. Regarding all this, the Report's conclusions are of a preliminary nature, as developments in State practice will continue to be followed and analysed by the Committee. This is one of the important reasons for the continuation of the Committee's work in the next two years regarding the law of the sea aspects, as the emerging State practice is an ongoing and dynamic process.

Professor Vidas stated that three main phases of development of State practice in relation to the issue of maintenance of the limits of maritime zones and maritime boundaries in the context of sea level rise had been identified. These were:

- An *initial* phase (from about 2010 to 2018) during which early evidence of State practice regarding the intent of some island States to maintain their maritime entitlements began to emerge. This practice became manifested especially in the South Pacific Region through a combination of regional policy documents and national legislation.
- A second phase, called in the Interim Report a *watershed* phase (in the course of 2019 and 2020), during which some main trends can be identified, but also some mixed approaches still existed. State practice at that time began to include an increasing number of examples from regions other than the South Pacific.
- And, a third phase, which is called in the Interim Report a *consolidation* phase, starting from mid-2021. So far this State practice has achieved some level of clarity and specificity. Its focus is now quite clear. Many

States from regions beyond the South Pacific have expressed their support – not only from the Caribbean and Indian ocean regions, but also beyond.⁴ The main elements of that practice are captured in the *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise* which was adopted by the Pacific Island Forum (PIF) Leaders in August 2021. This has been reflected in a Declaration adopted a month later, in September of the same year, by AOSIS (Alliance of Small Island States). The implication of those declarations is that there are now at least 41 parties to the LOS Convention supporting the same interpretation of the Convention regarding the limits of maritime zones and the rights and entitlements that shall continue to adhere to these zones notwithstanding a change of coastline due to sea level rise. This interpretation comprises two main elements:

- i. Affirmation that the LOS Convention imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the UN Secretary-General; and, in consequence, that:
- ii. Maritime zones, as established and notified to the UN Secretary-General in accordance with the LOS Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea level rise.

Professor Vidas then referred to the debate held in the Sixth Committee of the UN General Assembly at the end of 2021, which as explained in the Interim Report of the Committee illustrates several aspects. Firstly, there is an increasing level of general support for the views of the small island and low-lying States. This support has been provided by States across several regions (by several European Union States, South American States as well as some African and Asian States). This support is in part due to the recognition of the unprecedented nature of challenges posed by sea level rise to the particular vulnerability of small island and low-lying States, and in part due to the general agreement regarding the need for integrity of the LOSC. Secondly, there have not been, to date, any direct protests or specific objections to the practice as described and recently implemented. However, some States do have quite different legislation or practice concerning ambulatory baselines. Yet, as it was stated by Romania in the Sixth Committee debate in 2021, this practice or legislation was not directly meant for the sea level rise context.⁵

⁴ There is a detailed overview in the Report.

⁵ Statement by Romania, Sixth Committee, 21st meeting, 29 October 2021.

At the same time, Germany stated its readiness to work towards preserving “maritime zones and the rights and entitlements that flow from them in a manner consistent with the Convention, including through a *contemporary reading and interpretation of its intents and purposes, rather than through the development of new customary rules*”.⁶ Professor Vidas observed that it seemed that this statement summarized the views of many States in that debate. He also noted that it is the context and purpose of a treaty that ultimately must provide the guidance.

Professor Vidas then moved on to discuss some issues elaborated in the concluding section of Part II of the Interim Report, summarizing them as follows:

- i. Some Committee members noted that the need for ‘stability’ and ‘certainty’ is in the context of sea level rise interpreted by some States as calling for permanent baselines, while other States may interpret ‘ambulatory’ baselines as facilitating stability and certainty. Also, the view was expressed that all States should have the same rights to either declare their baselines ambulatory or permanent. The Committee was in agreement that this shows the need for a clarification of the law to be taken into account.
- ii. The Committee members indicated three possible implications that might arise under international law from the ongoing development of State practice, and therefore the need for further study regarding the following issues:
 - a. What are the implications for treaty interpretation of the relevant provisions of the LOSC in view of the emerging State practice concerning the preservation of maritime zones within their established and notified limits in the face of sea level rise?
 - b. What are the implications of this emerging State practice for customary international law?
 - c. What are the implications of sea level rise, including in the light of article 62 of the VCLT, for the finality of agreed maritime boundaries (including boundaries beyond the territorial sea)? Also, what are the implications for adjudicated maritime boundaries?

The Committee had agreed that all these issues have to be viewed in the light of the rapidly emerging State practice that has been manifested in the course of 2021. Professor Vidas also noted that this practice is likely to be further developed in the coming years, so that the Committee will continue to focus on it in its future work. He also emphasised that the conclusions presented on pages 20-21 of the Interim Report are preliminary.

⁶ Statement by Germany, Sixth Committee, 21st meeting, 29 October 2021 (emphasis added).

Professor Vidas next moved briefly to introduce Part III of the 2022 Interim Report on statehood and the rights of affected populations and explained that he will be giving some basic considerations only. In approaching the questions of a ‘State’ and ‘statehood’ in the context of its mandate, the Committee was mindful that these notions, and the impacts expected to be caused by sea level rise, are not to be dealt with on a generalized and presumptive basis, nor in abstract. While the issues concerning statehood arise specifically in the context of small island States, not all of them are also low-lying.

Two basic considerations framed the Committee’s discussion at the outset:

The *first* consideration relates to the category of States concerned. These States share a particular feature: they are all *coastal* States. This might lead to a tempting question: *Can a coastal State exist without a coast?* However, the Committee was aware that it may be at least several decades before any such situation may start to appear.

The *second* consideration concerns the time perspective. Given that sea level rise is a long-term process, different aspects of statehood of the coastal States will become critically affected at different points in time. It is therefore important not to focus exclusively on the long-term *outcome*, but also, and indeed primarily, on changes emerging in the medium term. In the course of this, which is likely to be a decades-long process, three factual elements of statehood – the *territory*, the *population* of the State inhabiting that territory, and the *display of authority* (or ability to govern) – will not necessarily be equally severely threatened by sea level rise, or not all at the same time.

Given these two basic considerations, the Committee has viewed the gradual diminishing of the elements of statehood of the coastal State *as a process*. This process will likely last for at least several decades. Throughout that long period of time, the rights of the affected populations will need adequate protection; moreover, maritime entitlements of the coastal State may persist for a long time even though the land territory may become increasingly less habitable before ultimately becoming uninhabitable.

In concluding his presentation, Professor Vidas stated that the Interim Report also considers a range of *interim approaches* or strategies, the application of which depends on different scenarios. He also highlighted that the Interim Report does not attempt to provide definitive answers or solutions. This is the approach that contextualizes the perspective of the Committee in this Interim Report.

The Session Chair then invited the Co-Rapporteur Elisa Fornalé to continue the presentation on Part III of the Report.

Professor Elisa Fornalé (Switzerland) thanked Professor Maxine Burkett, who was initially the Co-Rapporteur in the second phase of the work of the Committee, and noted that this part summarizes the work of the Committee during its virtual intersessional meetings held in 2020 and 2021, and the replies of the Committee’s members to the questionnaire that the Co-Rapporteurs collected to explore the options that could come into play for the transformation of statehood.

She commenced by explaining that the aim of the Committee’s work in connection with this topic is to explore the options that could come into play regarding the possible transformation of statehood. The Committee was mindful of the fact that sea level rise in a longer-term perspective will primarily affect two key elements of statehood: (1) the status of the territory, and its (2) permanent population. However, both are likely to have severe implications for the protection of the human rights of affected populations.

The Committee wanted to explore two specific scenarios that may apply for the protection of affected populations: the first one relates to the option of adaptive strategies (e.g., sea walls, land acquisition), and the second one to the potential creation of a new subject of international law (e.g., federal State, confederation of States, condominium). Professor Fornalé briefly introduced both scenarios.

In the first scenario, the Committee tried to focus mainly on the short-term measures (preservation of the territory of the State). Professor Fornalé explained that the Committee’s work aimed to identify strategies to protect the coast, implemented by States such as Fiji, Singapore, Nauru, with the construction of seawalls and floating facilities and so forth. The Committee explored a range of options, such as land purchase, rental, or the lease of territory that could be used to assure that a State can remain a State. Several States have given some indication of interest in engaging with these possibilities. The Interim Report of the Committee also referred to the historical case of the Vaitupu community from Tuvalu who bought land in Fiji in 1947. Professor Fornalé advised that there are still doubts on whether these options are realistic because there are clearly political implications, and there is little incentive for the host State to reduce its own sovereignty over the territory.

In the second scenario, the possibility of establishing new entities that could ensure the transformation of the ‘disappearing’ State was discussed. For instance, the Committee looked at the potential role of the creation of a federal State, a confederation of States, or a condominium. These three cases would be very different because the three scenarios concerned are each established on a very different legal basis. Again, political considerations will be increasingly relevant to explore whether and where any of these options may be realistic, and if so how any of these may be implemented. That was clearly a concern raised during the work of the Committee because it was not easy to identify possible solutions. Professor Fornalé emphasized that this will also be a part of the Committee’s work in the remaining two years of the current phase, through 2024.

When the Committee explored these two possible scenarios, the aim was also to understand how to link them with human rights protections for the population in the course of a longer-term process. According to scientific evidence, the exposure to slow-onset events (such as sea level rise) is leading to very severe negative effects on affected populations, and this could also result in forced mobility both within the State but also across its borders, and in particular inhabitants of small island States and low-lying coastal areas will face substantive impacts. For instance, sea level rise in Bangladesh could submerge 17% of the territory and affect 20 million people who will risk losing their land. Based on this reality, the Committee tried to understand how the present and future impacts of sea level rise could interfere with the protection of affected populations, starting from the effect that this could have in the full enjoyment of human rights, including for instance the right to life, and the right to safe drinking water, by creating unprecedented protection gaps. This will also have implications for different forms of human mobility within and across borders. As Professor Fornalé mentioned, the Committee discussed different measures in place to deal with migration, internal displacement, and planned relocation, and this was also addressed in the Sydney Declaration, adopted as a part of ILA Resolution 6/2018.

The issue of statelessness as the ‘worst case scenario’ hypothesis was highlighted, as the deprivation of nationality or citizenship without its replacement by another nationality could have severe consequences in terms of the preservation of human rights. There is also in the Committee’s Interim Report an analysis of problems that could arise since, as of today, many Pacific States do not allow for dual nationality. Professor Fornalé also mentioned the right to self-determination that could be under threat. The Committee decided to continue the work to examine these and other issues in the next two years, because it will be extremely important to explore the complex relationship between human rights obligations of State of origin, and other States, in particular in the context of very forms of statehood transformation.

A mapping exercise had been conducted to understand better the role of emerging measures at different levels, and a multilevel approach was adopted, particularly in the context of human mobility. The Committee has focused on the national, regional, and domestic levels to explore existing measures and if there would be new measures that could be adopted by member States. Professor Fornalé highlighted, in this context, the adoption of the Global Compact for Migration which, as she stated, offers a road map to improve international cooperation specifically in this context.

Professor Fornalé concluded her intervention by briefly referring to the critical challenges for the remaining work of the Committee and the key elements of the Committee’s upcoming work:

- What are the implications for statehood of declining State capacity and declining resident populations?

- What are the implications of different potential forms of State transformation (e.g., confederation, federation, condominium, lease) on the protection of affected populations?
- What are the legal gaps, and how might international law be developed to contribute to fill these gaps?

The Chair opened the floor for questions and comments.

Professor Alan Boyle (United Kingdom) commented on subsequent agreements and subsequent practice. He asked for clarification on the issue of State practice, whether the UN General Assembly should adopt a Resolution putting into concrete form the State practice endorsed by the international community. This option would be much more powerful in his opinion.

Professor Davor Vidas (Norway) responded by indicating that in the concluding section of Part II of the Interim Report, at page 21 the Committee observed that if “for example ... the UN General Assembly were to adopt a Resolution to this effect unanimously (...) presumably that would be a significant step towards meeting the requirement of an ‘agreement’ of all the States Parties as to the interpretation of the LOSC.” He also recalled that the work of the Committee is in that respect at an early stage; the Committee expects to have more conclusive responses by 2024. Moreover, he added that the ILC Study Group on sea-level rise in relation to international law is working within a similar time-frame to complete its integrated report planned for 2025.

Dr Ankit Malhotra mentioned the ‘ecocide’ as a plausible solution for the questions under discussion, that is, as a response to sea level rise to be addressed under the Rome Statute.

The Chair mentioned that ecocide is, theoretically, about human killing of the environment. This work is about the environment killing humans in return.

Professor Marcel Brus (Netherlands) expressed his support for the Interim Report of the Committee. However, he said that he would like to see more explicit attention to the broad context of the effects of climate change, in particular, the effect on human populations and the common global responsibilities to find solutions for these problems. The questions of the effectiveness of the State and human rights must be seen not only in trying to find solutions for the States affected by sea level rise, but more generally.

Professor Elisa Fornalé (Switzerland) explained that some of these questions were the main reason the Committee had agreed to ask for the extension of its original mandate beyond 2018. The Committee realized that there was a lot going on at the domestic level as well as at the international level. She emphasized that the Committee will try to use the next two years to focus more on the dimensions mentioned by Professor Brus, as

it needs more time to work on that. The different scenarios identified in her presentation are thus hypotheses to start from in responding to that task.

Professor Walter Kälin (Switzerland), responding to the question on how to focus more on human rights, stated that the real issue is the loss of State capacity, in particular, to protect and fulfill human rights. In his view, the Committee needs to explore the responsibility of other States and the international community in providing support to those affected States. He also thought the Committee needs to explore the linkage with the loss and damage discussion within UNFCCC processes and explore the potential of this concept to be used to help to protect and fulfil the human rights of affected people.

Professor Alan Boyle (United Kingdom) affirmed that there is a human rights dimension in the reality addressed by the Committee. However, in his view, the difficulty of the Committee's discussion is the formalistic term of 'statehood', which ignores human rights. He asked whether we should ask people directly what they want to do (in terms of relocation). Professor Boyle moreover said that he is not convinced with the invocation of rules on 'territory' and formalistic rules of 'statehood'. He sought further clarification on the need to emphasize human rights in light of Professor Brus' comment.

Professor Marcel Brus (Netherlands), answering Professor Boyle, noted that the work of the Committee should have more emphasis on human rights, and not only in an abstract and theoretical context. *What can a State do for the people?* He also reminded the audience of the fact that there is also a broader context and there are many undermining issues going on, such as conflict, and migration (for instance in Africa). The problems will become bigger. He highlighted that there is a problem with taking too narrow an approach.

Professor Patrícia Galvão Teles (Portugal), member of the ILC Study Group on sea-level rise in relation to international law, stressed that the issue that Professor Marcel Brus raised is important but she also emphasised the need to be careful in regard to the question "*what is special about sea level rise as an adverse impact of climate change?*". She further stated that this is a question also brought up within the ILC, because sea level rise is not the only impact. Some of the issues raised – as the statehood issue – are very specific to sea level rise as it has implications on the loss of territory. Human rights may have common aspects when we talk about droughts, desertification, fires, and so forth. Maybe the Committee is doing the groundwork to be applied also in human rights displacement to other areas of climate change impacts. Within the mandate of this Committee, what is at stake is how the three elements of the State are being affected by sea level rise; this is the reason why in her opinion the Committee should not open up to other aspects of climate change because of this interconnectedness with other aspects. Professor Galvão Teles, however, agreed that the solutions found through the Committee's work, and also through the ILC work, may be useful in other contexts.

Professor Alison Dundes (United States) congratulated the Committee on its work on this fascinating issue. She said that the consideration of human rights is important, particularly in relation to vulnerable groups. She wondered whether the impact on persons with disabilities may be considered (State capacity to protect the rights of persons with disabilities). She was also curious about whether the Committee has already looked at the implications for underwater cultural heritage in this question, having in mind that the treaty on Underwater Cultural Heritage may have some overlapping treatment on this question, so that harmonizing some instruments would be of interest.

The Chair closed the first circle of questions. He highlighted Professor Galvão Teles' intervention and reminded the audience that the Committee is focusing on the three elements of statehood for a particular reason. Then he moved to another circle of questions, giving the floor to Davor Vidas.

Professor Davor Vidas (Norway) wanted in that connection to add one reaction to the first circle of questions. He reminded that, concerning the issue of cultural heritage raised by Professor Dundes, the Committee had discussed it at their first meeting in Washington, DC in 2014, and later on also in Johannesburg in 2016. He noted that the Committee was agreed that it needs to keep its focus on those three main issues, reminding the audience that the Committee's focus in the remaining two years is largely on the protection of persons and affected populations.

Dr Arman Sarvarian (United Kingdom) asked to what degree the Committee intends to build on the earlier work regarding the preservation of existing maritime entitlements for the work on statehood and territory. He was thinking about the scenario in which the majority of the population of an existing 'island' relocates due to loss of 'habitability', and then the State artificially builds at the location to preserve its own maritime entitlements. He further asked whether the definition of an 'island' according to the LOSC can survive without amendment and what would be the implications of artificial islands for the South China Sea and other disputes.

Professor Davor Vidas (Norway) noted that the Committee had already discussed at length some of these issues in relation to the scenarios in Part III (confederations, federations, condominium, and so on) of the Interim Report. When it comes to the Law of the Sea Convention, it is very clear. There are several key provisions which refer to the 'land territory' of the coastal State. The Committee is aware of and referring to, but not necessarily strictly following in all contexts the definition of the IPCC's 6th assessment report on how the 'short term' is understood (i.e., until 2040), but approximately so; likewise, for the 'mid-term', which the IPCC defines more strictly for its purposes, as "2041–2060". The Committee had focused on a short-term time scale when it had looked at the law of the sea issues, as the Committee's proposals are less on the total submergence of islands, and more on the changes to existing coasts. Professor

Vidas also highlighted that the work of the Committee over the next two years will continue to focus on the law of the sea issues of maritime limits and boundaries.

Professor Clive Schofield (Australia) commented on the question of the classification of an island in the context of measures taken by some States, particularly in the cases in which a certain State is elevating its territory and building upon it. He asked whether this feature is an ‘artificial island’ or whether it remains a natural feature because in his view this poses challenges at identifying where ‘land reclamation’ becomes ‘artificial island-building’.

The Chair agreed that, regarding Professor Schofield’s comment on land reclamation and island building, the Committee will have to look at the issue.

Dr Juan Padin (Argentina) commented that many other institutions are dealing with the topic of sea level rise in relation to international law, such as the *Institut de Droit International*, domestic courts, and the International Law Commission. Additionally, he observed the massive overlapping or fragmentation of international law, and the need to make the work productive by connecting with all other institutions.

Professor Davor Vidas (Norway) wanted to emphasize that the interaction with and mutual influence of other work, as referred to by the scholar from Argentina, is a very important aspect of the Committee’s work. He also gave the examples of some countries, such as Argentina and Chile, who in the Sixth Committee debate in 2021 quoted from ILA Resolution 5/2018, as being examples of mutual reference and interaction between the States and legal scholarship on the topic.

The Chair added that the product of the work of the ILA Committee once approved by the Association is very widely circulated to all relevant institutions, including the UN Secretary-General, the UN General Assembly, the ILC, and should be taken into consideration by those bodies; indeed, it has already been seriously considered by them. He also reiterated that an important part of the significance of the work that the Committee does is to influence the work of other bodies.

Professor Armando Rocha (Portugal) raised the question of whether and to what extent Climate Change Law principles and rules may help the Committee’s work in terms of ambulatory baselines, for instance. He further raised the question of how the working group has included UNFCCC Principles into its work and Report.

The Chair clarified that Climate Change Law is based on a different perspective, it is concerned with the cause, while sea level rise is the effect. However, the Committee is dealing more with the effect than the cause.

Professor Alexander Proelss (Germany) commented on Armando Rocha’s intervention. In his opinion, there is a clear linkage to the Climate Change regime. He

suggested that the principles and rules of Climate Change Law should play a role in the Committee's work in relation to loss and damage, and common but differentiated responsibilities, respectively.

Dr Michael Kronenberger (Germany) mentioned the risk that companies would accept if States' baselines change. In his opinion, it might be necessary to have a legal mechanism to ensure that States have some control of what the private sector might do in areas that might be the 'former' Exclusive Economic Zones of 'disappearing' States. Even if these States remain States under international law, it is not yet clear how, for example, their fishery resources might be exploited by big international companies in the future.

The Chair thanked all participants for their contributions; these were sure to enrich the Committee's discussion. He then closed the session.

Reporter: Daniela Martins Pereira da Silva