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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

REPORT ON MATTERS RELATING TO THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS SEVENTY-SIXTH SESSION

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I. REPORT ON MATTERS RELATING TO THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS SEVENTY-SIXTH SESSION

A. Background

1. Pursuant to its Statutes, AALCO is mandated to examine the topics under consideration by the International Law Commission (ILC or Commission), consider its reports and forward the views of the Member States to it. Over the years, fulfilling this obligation has allowed AALCO Member States to make significant contributions to the codification and progressive development of international law while taking forward the close relationship between the two organizations.

2. It has become a tradition that members of the Commission are invited to the Annual Sessions of AALCO to provide updates on the ongoing work of the Commission and share their thoughts on matters on the agenda of the Commission. In a similar fashion it is customary that the Secretary-General of AALCO attends sessions of the Commission and delivers an address representing the views of AALCO Member States on topics on the agenda of the Commission. Members of the Commission have time and again expressed appreciation that this continuous exchange enriches their work informing it with perspectives from Asian-African States on topics under deliberation.

3. AALCO's Secretariat brief on the "Report on Matters Relating to the Work of the International Law Commission at its seventy-sixth session" covers (i) the work of the Commission on the substantive topics on its agenda at its most recent session, (ii) discussions on the topic at the previous Annual Session of AALCO, (iii) the comments and observations of the AALCO Secretariat.

4. The seventy-sixth Session (2025) of the Commission was held from 28 April to 30 May 2025, and the final of the report to the UN General Assembly was made available on 15 August 2025 on the official website of the Commission. To keep the Member States informed about the Commission's most recent work and facilitate deliberations, the Secretariat has relied on the most recent report of the Commission on the work of its seventy-sixth session (2025).

5. The present document (AALCO/63/KAMPALA/2025/SD/S1) reports on the work of the Commission on the following substantive topics that were placed on the agenda at its seventy-sixth session (2025):

I. Immunity of State officials from foreign criminal jurisdiction.
II. Succession of States in respect of State responsibility.
III. General principles of law.
IV. Sea-level rise in relation to international law.
V. Settlement of disputes to which international organizations are parties.
VI. Prevention and repression of piracy and armed robbery at sea.
VII. Subsidiary means for the determination of rules of international law.
VIII. Non-legally binding international agreements.

B. Deliberations on the Select Items from the Agenda of the International Law Commission at the Sixty-Second Annual Session (Bangkok, the Kingdom of Thailand)

6. A brief background to the topic was provided by H.E. Dr. Kamalinne Pinitpuvadol, the Secretary-General of AALCO while introducing the topic in a statement. The Secretary-General began with a warm welcome, reaffirming AALCO's statutory mandate, codified in Article 1(d) of its Statutes, i.e. to examine topics on the agenda of the Commission, consider its reports and report the views of its Member States. Over the years, he asserted, AALCO had made efforts towards catalysing Afro-Asian contribution in the codification and progressive development of international law. Continuing this tradition, more robust and scholarly engagement with the ILC was anticipated, particularly in amplifying the voice of Asian and African States in shaping the rules of international law.

7. Subsequently, he outlined the main topics addressed at the seventy-fifth session of the Commission i.e. the settlement of international disputes involving international organizations, subsidiary means for determining rules of international law, the prevention and repression of piracy and armed robbery at sea, the immunity of State officials from foreign criminal

jurisdiction, succession of States and State responsibility, sea-level rise, and non-legally binding international agreements. The Secretary-General encouraged all Member States to actively engage, debate, and deepen Afro-Asian engagement with the Commission.

8. Thereafter, the President of the Sixty-Second Annual Session and Chair of the Meeting, H.E. Mrs. Suphanvasa Chotikajan Tang, Director-General, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Thailand opened the floor for statements. Before inviting Member States to deliver statements, the Chair invited the following experts and members of the Commission to deliver statements: Dr. Vilawan Mangklatanakul, Prof. Phoebe Okowa, Prof. Masahiko Asada, Amb. Hong Thao Nguyen, Prof. Bimal N. Patel, Prof. Alioune Sall and Prof. Mārtiņš Paparinskis.

9. **Dr. Vilawan Mangklatanakul, Member, ILC** opened her remarks by warmly thanking the Secretary-General and AALCO for enabling her participation as a Member of the Commission. She commended the productivity of the Commission seventy-fifth session before outlining the substantive topics on the Commission's agenda, that included topics on the agenda ranging from immunity of State officials to foreign criminal jurisdiction and State succession to the law of the sea and non-legally binding agreements.

10. However, after informing the meeting about the topics under deliberation at the Commission she delved deeper into a fundamental concern i.e. the Commission's continued adherence to traditional international law topics, notably immunities and the sources of law, despite a rapidly changing global context. Dr. Mangklatanakul advocated for the Commission to confront more specialized, technical, and contemporary issues that more closely match present-day concerns of the international community.

11. In particular, she introduced her proposal for the "Protection of Foreign Investment in International Law" to be added to the Commission's long-term programme of work. She explained that historically, the Commission's engagement with international economic law was minimal, save for its prior discussions on Most-Favoured-Nation (MFN) clauses and some other topics. She argued it was "long overdue" for a comprehensive assessment of foreign investment

law, especially given the urgency to bridge the Sustainable Development Goals' (SDGs) investment gap, which she noted that UNCTAD estimates at $4 trillion annually in developing countries.

12. Dr. Mangklatanakul linked the development needs of Asia, Africa, and the broader global South to FDI, deeming it a principal means for financing the 2030 Sustainable Development Agenda. She also noted that while there is a drive to attract more investment, there exists the simultaneous challenge for States to regulate for public interest reasons to address issues such as climate change and public health. Accordingly, she called for international investment law that strikes a balance between protection of investors and the regulatory interests and rights of host States.

13. She pointed out that the current international investment regime is suffering a "legitimacy crisis," often perceived, especially due to arbitral interpretations, as disproportionately favouring investors to the detriment of States' rights to regulate in the public interest. With rising cases involving national emergencies, public utilities, or harmful substances, there is a risk that protective standards could unduly constrain legitimate regulatory action.

14. She acknowledged that reform efforts were underway, notably amendments to the ICSID Rules and UNCITRAL's ISDS (Investor-State Dispute Settlement) overhaul. However, she noted that these have focused on procedural reforms and not the substantive changes to the law required for a legitimacy reset. Only the Commission, she contended, possessed the global authority, access to State practice, and relationship with the UNGA's Sixth Committee to facilitate the much-needed progressive development of international investment law's substance.

15. Dr. Mangklatanakul emphasized that Asia and Africa jointly accounted for the majority of international investment agreements and a disproportionate share of investment disputes. She made a strong case for deeper engagement, lamenting the persistent underrepresentation of Asian and African submissions on topics on the agenda of the Commission. Greater participation and clear, detailed inputs from AALCO Member States, she concluded, were essential at every stage

ranging from topic selection through to the draft's adoption ensuring that the work of the Commission reflects global realities.

16. **Prof. Phoebe Okawa, Member, ILC** greeted the assembly, acknowledging the warm hospitality of both the AALCO and the Government of the Kingdom of Thailand. She described Immunity of State officials from foreign criminal jurisdiction as one of the most resonant topics for AALCO Member States.

17. In her address, she outlined the evolution and procedural framing of the discussion and recalled that the Commission's focus is exclusively on immunities from criminal jurisdiction as applicable to current or former State officials, excluding diplomats (already covered by separate treaties), as well as agents of international organizations. The topic, she underscored, does not encompass civil jurisdiction nor immunities arising before international courts.

18. Prof. Okowa highlighted a key power dynamic i.e. the exercise of foreign criminal jurisdiction typically by Western nations against officials from non-Western States. Hence, she recalled that for Afro-Asian states, the question of immunities is not abstract but a vital concern for legal and diplomatic equality. She regretted the historically low participation of African and Asian states in submitting comments, describing this as a missed opportunity to shape the very norms that disproportionately affect them.

19. She described the Commission's debate about the scope of personal immunity ("*ratione personae*")—which, in international law, has generally been limited to the "troika" of heads of State, heads of government, and foreign ministers—as reaffirmed by written comments from States (mostly Western and Latin American). She stated that central to the upcoming session of the Commission would be the exceptions to immunity for grave crimes. She underscored that under current draft Article 7, State officials who would typically enjoy immunity cannot claim it where accused of genocide, war crimes, or crimes against humanity, but, contentiously, not for the crime of aggression. She expressed that this has been viewed by several members of the Commission as an omission favouring militarily powerful States.

20. She also discussed the profound divergences within both the Commission and the broader international community about whether such exceptions to immunity are genuinely grounded in customary international law. Moreover, she stated that the exceptions might reinforce asymmetry as officials from the Global South were more likely to face trial for war crimes, while heads of powerful States would be shielded from prosecution for aggression. To address this issue, she reminded the meeting that the Commission tried to provide a balance by embedding robust procedural safeguards to prevent misuse of criminal proceedings for political ends, including fair notification, expeditious review, competent tribunals, and early-stage adjudication of immunity claims.

21. Prof. Okowa concluded with an appeal to AALCO Member States to actively contribute information about their practice and to participate in shaping the evolving procedural safeguards for immunities, underscoring that engagement was key to shifting the balance of international law in a more equitable direction.

22. **Prof. Masahiko Asada, Member, ILC** briefed the meeting on the newly adopted topic of non-legally binding international agreements. He reported that the Commission's debates have grappled with fundamental definitional issues, starting with whether to use "agreements," "instruments," or "arrangements" as the operative term. He explained that "agreement" typically has a binding connotation, hence the argument expressed by several States for alternative terminology. Some in the Commission, he noted, insisted on "agreements," referencing the Vienna Convention on the Law of Treaties and for the sake of a manageable scope. Others, however, including himself, saw merit in including "instruments" as this would capture important unilateral acts of international organizations.

23. Concerning scope, he reported that the special rapporteur had proposed limiting the study to written international law agreements, deliberately excluding unwritten, domestically grounded, or purely organizational resolutions. This, he explained, was to avoid analytic confusion and preserve doctrinal precision, but some members of the Commission, including himself, felt this excluded too much important State and organizational practice. On inter-institutional agreements (like those between government departments or agencies), the view was

split over whether these constitute "international agreements." The special rapporteur's summary leaned toward a narrower scope but noted the possibility of future expansion based on inputs received from Member States.

24. As for the main analytical issues, Prof. Asada noted three issues: (1) criteria for distinguishing treaties and non-binding agreements, (2) whether and how treaty law can influence non-legally binding instruments (for instance, via analogy or by reference to *jus cogens* norms), and (3) the potential legal effects of such agreements. He described ongoing debate among the members of the Commission about subjective (intent-based) and objective (form/text/circumstances) criteria. There was no consensus about whether, absent a clear indication, agreements should be presumed binding or non-binding.

25. He also informed the meeting that in the Commission discussion additionally focused on whether non-binding instruments should be considered as "subsequent agreements" in the interpretation of treaties (as per Article 31 of the Vienna Convention on the Law of Treaties) or in the identification of customary international law and general principles of law. Reservations were expressed, fearing this might covertly elevate non-binding agreements into sources of law. The special rapporteur's report also touched on whether to use "legal effects," "legal implications," or "legal consequences" as the operative term.

26. Regarding the final form of the outcome, Prof. Asada detailed the debate between producing "draft conclusions," which serve an interpretive/guidance function, and "guidelines," which because of their prescriptive connotation were avoided by the special rapporteur. Prof. Asada encouraged AALCO Member States to provide details of their practice, given the importance of Asian and African perspectives in determining the boundaries and consequences of non-legally binding agreements.

27. **Amb. Hong Thao Nguyen, Member, ILC** began by expressing appreciation for the chance to participate in the Annual Session, highlighting the unprecedented representation of Asian and African members in the ILC (now accounting for half the total membership) and the historic election of women to a majority of the Bureau.

28. He then concentrated on the work of the Asia-Pacific Group (APG) in the Commission, especially regarding the topic "Prevention and Repression of Piracy and Armed Robbery at Sea." The APG, he said, advocated for the inclusion of a wide range of Asian and African perspectives, including from ASEAN and a variety of regional security and policing forums, in the Commission's work product. He noted that these initiatives aimed to ensure the unique legal and operational approaches of these regions are reflected in the codification and progressive development of international law. He stated that APG also pressed for the inclusion of guidelines and handbooks developed in Asia, such as the "Guide for Tankers Operating in Asia against Piracy and Armed Robbery."

29. He was clear in emphasizing the legal distinction between piracy and armed robbery at sea, arguing that the location of the act and the applicable jurisdiction are crucial for determining legal responses and forms of international cooperation. He called emphatically for avoiding any attempt at universal jurisdiction or the creation of a single global regime, cautioning that this could override the diversity of national and regional practices.

30. Amb. Nguyen outlined the obligation, under international law, for States to cooperate to the greatest extent possible through legislative, administrative, and judicial measures and described APG's ongoing commitment to participate constructively in all areas of the ILC's work that aims at building an equitable international legal order.

31. **Prof. Bimal N. Patel, Member, ILC** addressed the meeting via a pre-recorded video message, and drew the attention of the delegates to the topic "accountability for crimes against UN peacekeepers" and shared his views on his proposal to the Commission for inclusion in its agenda. He underscored the grim reality that over 4,000 UN peacekeepers had died in the field, with a significant number killed in hostile acts. He noted that the sharp rise in impunity for crimes against peacekeepers fostered partly by the inability of the existing legal framework to guarantee effective prosecution was a clear threat to international peacekeeping as a whole.

32. He also noted that while the 1994 Safety Convention and its 2005 Protocol defined certain crimes and mandated States to criminalize them domestically, there were some important gaps. By way of example, he elaborated that the UN itself lacks the capacity to investigate or compel cooperation in national criminal investigations under the domestic laws of host States. Additionally, he stated that not all forms of contemporary threats, such as disinformation campaigns, were covered by current rules.

33. Prof. Patel called for a clearer and more updated international legal framework, emphasizing the importance of defining the universe of crimes against peacekeepers and harmonizing investigative, prosecutorial, and procedural standards. Citing the Accra Peacekeeping Ministerial Meeting's focus on these dilemmas, he advocated for input on operational procedures (SOPs), accountability mechanisms post-mission, and host-state capacity-building measures. He reminded states of the Security Council's recent adoption of Resolution 2589 (2021) aimed at strengthening accountability for crimes against peacekeepers.

34. Prof. Patel concluded with a request to Member States to send comments to the Commission on four active topics and reported on his chairmanship of the working group on State succession in respect of State responsibility. He appealed to all present to further support legal education, international seminars, and the new ILC Trust Fund, especially for the benefit of developing countries.

35. **Prof. Alioune Sall, Member, ILC** delivered his remarks in French (translated into English), reflecting on the broader contribution of the ILC to the strengthening of the rule of law. He argued that the rule of law is rooted in the subjection of all to the law and the existence of an effective system of jurisdiction. He contended that, in the UN context, these elementary pillars underpin peace, security, development, and the promotion of human rights.

36. Prof. Sall explained that the Commission's central mission the codification and progressive development of international law directly serves the UN's goals and enhances the rule of law at the global level. He cited the Commission's prior work on the responsibility of States for internationally wrongful acts, the codification of imperative legal standards, and efforts

in international criminal law as illustrations. He concluded by noting the rule of law was a never-ending pursuit, not a destination, and measured the vitality of the system by the involvement of its subjects in both its development and debate.

37. **Prof. Mārtiņš Paparinskis, Member, ILC** provided an accessible summary of the ILC's new long-term programme item on compensation for damage resulting from internationally wrongful acts. He contextualized the topic within the Commission's established focus on state responsibility, particularly the 2001 Articles, but noted that much more could be said in light of robust judicial and State practice from the last two decades.

38. He clarified that the focus would be on secondary rules rather than primary obligations or implementation and countermeasures. He laid out the core areas for analysis: rules governing compensation, definitions and types of damage, causality, equity, valuation of losses, lost profits, and interest. Prof. Paparinskis expressed a preference for "principles" as the final product, enabling practical and flexible application and consciously reflecting the customary character of much of the law in this area.

39. **The Delegate of Malaysia** welcomed the report prepared by the Secretariat and acknowledged progress on several topics. Addressing immunities, Malaysia asked for clarifications concerning the application of exceptions where treaty definitions are not universally accepted and sought further guidance on the distinction between procedural safeguards for different types of immunities. The Malaysian delegate highlighted the importance of confidentiality and good faith when states request information about immunity. Regarding sea-level rise, Malaysia stressed legal measures to preserve state baselines as vital for statehood continuity, advocated for fixed maritime boundaries regardless of sea-level rise, and supported "common but differentiated responsibilities" in offering humanitarian assistance.

40. On "settlement of disputes involving international organizations" Malaysia expressed its favour for tailored dispute resolution, and warned against immunities that bar justice, and requested careful consideration of amendments to the ICJ Statute. Malaysia raised definitional questions about piracy and "armed robbery at sea," especially when motivated by ideology or

politics, and called for comprehensive commentaries on new draft articles. With respect to the topic "subsidiary means for the determination of the rules of international law' Malaysia supported the view that these were not sources of international law but vital for determining their content, favouring the current draft conclusions on the absence of binding precedent. On non-legally binding agreements, Malaysia stressed the need for clear criteria and was open to further debate at the UNGA.

41. **The Delegate of Japan** commended the participation of Asian and African perspectives in the ILC, calling for expanded sharing of regional state practice via AALCO. Turning to the issue of sea-level rise, Japan denoted it as an urgent global challenge, highlighting the threat it poses to peace and security and the imperative of international cooperation. Japan also welcomed AALCO's efforts to create forums for advancing practical and legal understanding of sea-level rise's impact on statehood.

42. **The Delegate of the Islamic Republic of Iran** reaffirmed the need for active Asian and African engagement within the Commission, emphasizing equitable representation in appointing special rapporteurs.

43. On disputes involving international organizations, Iran backed limiting the topic to legal disputes, excluding the purely political and suggested adding "good offices" as a method of settlement. On the topic of subsidiary means, it was noted that State practice itself could constitute custom and that General Assembly resolutions sometimes act as additional subsidiary means, but only when supported by *opinio juris*. On piracy, Iran advocated including "threat" in defining "armed robbery at sea." With respect to the topic on immunity of State officials the Iranian delegate defended absolute immunity *ratione personae* for top officials for official and private acts during office, opposing any insinuation of "impunity." On topic relating to sea-level rise, Iran emphasized the inviolability of the principle of territorial integrity. Further with respect to the topic of non-legally binding international agreements, Iran expressed its preference for the formulation of "guidelines" and careful attention to terminology.

44. **The Delegate of the Kingdom of Thailand** reiterated the centrality of AALCO's relationship with the Commission and regretted the missed exchange of views this year. In this regard Thailand expressed support for hosting annual workshops with the Commission to enhance cooperation. Thailand suggested for transparency in filling Commission vacancies highlighting recent appointments of qualified Asian members. In its address Thailand touched upon four topics in its statement. It expressed support for including non-legally binding agreements in the Commission's programme and recognized the human and legal toll of sea-level rise. Thailand also expressed support for more inclusive consideration of regional piracy frameworks; and endorsed the topics of compensation and foreign investment law as valuable for Asia and Africa.

45. **The Delegate of the Republic of India** offered broad support for AALCO and Commission reports. On the topic relating to immunities, India supported the Commission's efforts at balancing State responsibility, sovereign equality, and procedural safeguards, while noting the topic's complexity.

46. On the topic of State succession in respect of State responsibility, India underlined the need for clarity regarding what transfers between successor and predecessor States, referencing parallels to state debt. On topic "sea-level rise in relation to international law", India called for caution regarding the presumption of statehood continuity and advocated substantial cooperation to manage migration risks.

47. On the topic of piracy, India called for solutions that harmonize international (particularly UNCLOS), national, and regional practices. With respect to the topic "settlement of dispute to which international organizations are parties" India urged careful attention to the diversity of international organizations when drafting recommendations on dispute settlement. Further in its statement India encouraged the Commission to explore the scope of subsidiary means and the criteria for non-legally binding agreements.

48. **The Delegate of the Socialist Republic of Viet Nam** praised the comprehensive Secretariat report and emphasized that sea-level rise is of paramount concern particularly for

developing and coastal states. Viet Nam expressed that the application of international law to this issue is essential to state development and the stability of international relations. Vietnam underlined the primacy of sovereignty, territorial integrity, and respect for international commitments, noting the need for international and regional mechanisms to protect populations. With respect to the topic on piracy, Viet Nam stressed consistency with the UNCLOS and regional cooperation initiatives. Further on the topic relating to immunities, Vietnam stressed a careful balance between sovereign equality and accountability for serious international crimes.

49. **The Delegate of the People's Republic of China** opened with appreciation for increased Asian and African participation in the Commission. In its statement China outlined three foundational principles for the Commission: diversity in legal sources, problem orientation in setting topics, and consensus-based decision-making.

50. On the topic with respect to immunities, China opposed limiting personal immunity to the "troika," citing changing diplomatic practice, and warned against exceptions to immunity without consensus, fearing political abuse.

51. With respect to the topic "non-legally binding international agreements, China preferred a focus on State and intergovernmental practice and *opinio juris* as the touchstone for legal status, and called for clarity in differentiating from treaties. It further preferred the final output of guidelines and not draft articles as better suited for the topic.

52. On the topic "subsidiary means for the determination of the rules of international law", China expressed agreement that these were tools, not sources, and urged the greatest caution with judicial decisions. On the topic relating to piracy, China called for legislative and administrative actions by coastal States and a balance regarding sovereignty and universal jurisdiction. On "sea-level rise in relation to international law", China advocated caution, a strict adherence to the mandate, and careful incorporation of State practice.

53. **The Delegate of the Republic of Indonesia** emphasized its vulnerability to sea-level rise, noting the stakes for its sovereignty and rights as the world's largest archipelago Indonesia

encouraged the Commission to ensure that any outcome preserves legal certainty and stability regarding maritime boundaries under UNCLOS and the maintenance of official charts. Indonesia expressed its commitment to continuing constructive engagement on the topic.

54. **The Delegate of the Republic of Korea** addressed the topic "subsidiary means for the determination of rules of international law" particularly judicial decisions as non-binding but significant interpretive tools. The Republic of Korea in its statement emphasized the importance of scepticism and prudence in evaluating each decision's value, noting divergent results in international jurisprudence even on similar legal questions. In this regard the Republic of Korea addressed a recent decision of the ICJ concerning the continental shelf, with respect to which the Republic of Korea reaffirmed its right to a continental shelf beyond 200 nautical miles.

55. Speaking as an observer state, **the Delegate of the Russian Federation** welcomed greater Afro-Asian engagement and warned against the Commission accelerating its work at the expense of quality. On the topic "succession of States in respect of State responsibility", Russia backed a close to the topic due to limited practice. On the topic "subsidiary means for the determination of rules of international law", the Russian Federation expressed agreement with the consensus that these were not sources but aids. On the topic of "immunity of State official from foreign criminal jurisdiction", the Russian Federation voiced concern over politicization, advocating deletion of exceptions under draft article 7, and called for Asian and African support on this point. On sea-level rise and new topics, Russia urged caution in the current global context and cautioned against rushing work due to resource constraints or external pressures.

C. AALCO Secretariat's suggestions on the topics to be deliberated at the Sixty-Third Annual Session

56. The seventy-sixth session of the Commission considered the following topics:

I. Immunity of State officials from foreign criminal jurisdiction.
II. Succession of States in respect of State responsibility.
III. General principles of law.

IV. Sea-level rise in relation to international law.

V. Settlement of disputes to which international organizations are parties.

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

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

VIII. Non-legally binding international agreements.

57. The Secretariat suggests that the Member States may deliver statements on the work of the Commission in the aforementioned topics at the Sixty-Third Annual Session of AALCO for which reference could be made under each specific topic.

II. IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

A. Background

58. The International Law Commission (ILC) included the topic "Immunity of State Officials from Foreign Criminal Jurisdiction" in its programme of work at its fifty-ninth session in 2007, appointing Mr. Roman A. Kolodkin of Russia as special rapporteur.[1] The Commission requested a background study, which was made available at its sixtieth session in 2008. Mr. Kolodkin submitted three reports: the preliminary report was considered in 2008, while the second and third reports were considered at the sixty-third session in 2011. The topic could not be addressed during the sixty-first (2009) and sixty-second (2010) sessions. At the sixty-fourth session in 2012, Ms. Concepción Escobar Hernández replaced Mr. Kolodkin as special rapporteur. She submitted eight reports, which were considered over successive sessions: the preliminary report in 2012, second in 2013, third in 2014, fourth in 2015, fifth in 2016 and 2017, sixth in 2018 and 2019, seventh in 2019, and eighth in 2021. At the seventy-third session in 2022, the Commission adopted on first reading the full set of 18 draft articles and a draft annex, with commentaries, and decided to transmit them to Governments for comments through the Secretary-General. In 2023, at its seventy-fourth session, Mr. Claudio Grossman Guiloff replaced Ms. Escobar Hernández as special rapporteur. At the seventy-fifth session in 2024, the Commission considered the first report of Mr. Grossman Guiloff and related Government comments. Following plenary debate, draft articles 1 to 6 were referred to the Drafting Committee. The Commission subsequently took note of draft articles 1, 3, 4, and 5, as contained in the Committee's report, which were provisionally adopted at that session.

[1] International Law Commission, 'Report of the International Law Commission on the Work of Its Seventy-Sixth Session' (2025) UN Doc A/80/10 <https://legal.un.org/ilc/reports/2025/> accessed 23 August 2025.

B. Consideration of the topic at the seventy-sixth session (2025)

59. At its seventy-sixth session, the Commission considered the second report of the special rapporteur, along with comments and observations from Governments.[2] The special rapporteur reviewed feedback on draft articles 7 to 18 and the draft annex, proposing revisions for second reading based on written comments and discussions in the Sixth Committee. At its 3707th meeting on 5 May 2025, the Commission referred draft articles 7 to 18 and the draft annex to the Drafting Committee, considering plenary comments. Earlier, at its 3704th meeting on 30 April 2025, the Commission provisionally adopted draft articles 1, 3, 4, and 5. At the 3718th meeting on 23 May 2025, the Drafting Committee report on draft articles 7, 8, and 9 was introduced and noted, with adoption postponed to the seventy-seventh session due to time constraints. Finally, at its 3722nd to 3724th meetings on 27–28 May 2025, the Commission adopted commentaries to draft articles 1, 3, 4, and 5 provisionally adopted on second reading.

Introduction by the special rapporteur of the report

60. The special rapporteur emphasized that the second reading aimed to streamline the first-reading text, modifying it only for compelling reasons, such as new developments or clarifications.[3] The second report reflected a careful review of extensive written and oral State comments, as well as significant developments in national jurisprudence and legislation since 2022, particularly concerning the most serious international crimes.

61. Regarding draft article 7 on crimes under international law exempt from immunity *ratione materiae*, the special rapporteur noted broad State support for holding individuals accountable for the most serious international crimes.[4] Some States favoured listing specific crimes for legal certainty, while others preferred criteria to avoid hindering the law's progressive development. Considering principles of international criminal law and crime typification, the special rapporteur found the list approach persuasive, emphasizing its non-exhaustive nature to allow future inclusion of additional crimes. He also highlighted that non-governmental

[2] Ibid 20.
[3] Ibid 20.
[4] Ibid 21.

organizations recommended clarifying this non-exhaustive aspect in the draft article or its commentary.

62. The special rapporteur proposed the addition of the crimes of aggression, slavery, and the slave trade to the list of crimes contained in draft article 7.[5] It was noted that these crimes constitute some of the most serious crimes under international law justifying their inclusion in draft article 7.

63. As regards procedural safeguards contained in Part Four of the draft articles, the special rapporteur observed that States regarded safeguards as a crucial component of the work on the topic, given their role in balancing the rights of the forum State and the State of the Official.[6]

64. Regarding draft article 8 on the application of Part Four, the special rapporteur emphasized that procedural safeguards apply to both immunity *ratione personae* and *ratione materiae*, supported by several States for consistency and due process.[7] Some States sought clarification on whether safeguards apply at investigation or post-charge stages. He recommended clarifying in the commentary that safeguards cover all stages. He also proposed revising confusing phrases, dividing the article into two paragraphs, and addressing the relationship with draft article 7 further in the commentary to ensure clarity and prevent misinterpretation.

65. As regards draft article 9, concerning the forum State's examination of immunity, the special rapporteur noted that this draft article had been among the most highly debated.[8] It requires the forum State to assess immunity before exercising criminal jurisdiction. Some States worried this could grant excessive discretion, while others stressed early scrutiny to prevent wrongful proceedings. The special rapporteur recommended that the commentary emphasize that examination must occur before any coercive act and should be guided by good faith,

[5] Ibid 21.
[6] Ibid 22.
[7] Ibid 22.
[8] Ibid 22.

proportionality, and consultation with the official's State. He also proposed adding "as far as practicable" to address urgent situations.

66. Draft article 10, on notifying the State of the official, was widely welcomed as an important procedural safeguard.[9] Some States raised concerns about the timing and content of notification, particularly regarding ongoing investigations and confidentiality. The special rapporteur proposed amendments to paragraph 1 to address these concerns and agreed with a suggestion to delete the final phrase of paragraph 3, noting the first phrase already covered all accepted communication methods. Similar amendments were proposed for draft articles 11, 12, and 13.

67. Draft article 11, on the invocation of immunity, raised concerns about whether immunity required formal invocation or applied automatically.[10] The special rapporteur recommended clarifying in the commentary that while immunity does not depend on invocation, formally invoking it enhances procedural clarity and fosters inter-State dialogue. He also suggested addressing potential abuse in the commentary and emphasizing good faith and cooperation as guiding principles to ensure proper application and prevent misuse of the immunity framework.

68. Draft article 12, on waiver of immunity, saw broad support for requiring an express waiver, reflecting existing international law, while some States suggested recognizing an implicit waiver.[11] The special rapporteur recommended retaining the express waiver requirement to ensure legal certainty and respect for diplomatic relations. He proposed that the commentary acknowledge that certain domestic legal systems may infer waiver from clear conduct but stressed such interpretations must be approached cautiously, upholding the sovereign equality of States.

69. Draft article 13 lets the forum State request information from the official's State. Some States asked for clarification on when such requests can be made, their non-binding nature, and how they relate to notification and invocation rules. The special rapporteur suggested the

[9] Ibid 22.
[10] Ibid 22-23.
[11] Ibid 23.

commentary clarify that draft article 13 works alongside, but does not replace, the rules in draft articles 10 and 11.

70. Draft article 14, on determining immunity, raised concerns that it could allow unilateral or politicized decisions.[12] The special rapporteur recommended clarifying in the commentary that such determinations must be based on law, not politics, and should be objective. He also highlighted the importance of consultations and dispute-resolution mechanisms to address any disagreements, ensuring decisions are fair, transparent, and consistent with international legal standards.

71. Draft article 15, on transferring criminal proceedings to the official's State, raised concerns about enforceability and consistency.[13] The special rapporteur emphasized that the provision is based on complementarity and mutual legal assistance. He recommended clarifying in the commentary that the forum State should ensure any transfer serves the interests of justice and aligns with the seriousness of the alleged crime, providing a fair and balanced approach to handling such cases.

72. Draft article 16, on fair treatment of the State official, received broad support from States.[14] The special rapporteur recommended that the commentary explain "fair treatment" by referencing international human rights guarantees, including the presumption of innocence, access to legal counsel, timely notification of charges, and protection against arbitrary detention, ensuring that officials are treated justly and in line with established human rights standards throughout criminal proceedings.

73. Draft article 17, encouraging States to consult on immunity disputes, was widely supported as a way to reduce tensions and promote diplomatic solutions.[15] The special rapporteur recommended clarifying that consultations do not replace legal determinations but serve as a tool

[12] Ibid 23.
[13] Ibid 23.
[14] Ibid 23.
[15] Ibid 23.

to prevent conflict, foster mutual respect, and encourage cooperation between States in resolving disagreements over immunity issues.

74. Draft article 18, on peaceful dispute settlement, received support from several States, though some urged caution about formal mechanisms.[16] The special rapporteur recommended retaining the article while clarifying in the commentary that States remain free to choose their preferred dispute resolution methods. He noted that the provision aligns with Article 33 of the UN Charter and reinforces States' commitment to maintaining a peaceful and lawful international order.

75. The special rapporteur concluded that States' arguments supporting the draft articles as a basis for a convention were persuasive.[17] He noted that a convention would provide a framework for negotiations, allowing States to refine provisions as needed. He also emphasized that some draft articles, like draft article 18, assume inclusion in a treaty context and would have limited effect outside a formal convention, highlighting the importance of a binding international framework for their implementation.

Summary of the debate

76. Members welcomed the special rapporteur's second report for its clarity and thorough engagement with States' comments, and also acknowledged the contributions of former special rapporteurs, Mr. Kolodkin and Ms. Escobar Hernández.[18] Some regretted that the shortened seventy-sixth session limited full debate. While many supported maintaining the draft articles largely unchanged, allowing revisions mainly to commentaries, others urged a more ambitious second reading to address first-reading gaps, including forum State jurisdiction issues. Concerns were raised about geographical imbalance in cited practice, with calls to include regional instruments like the Malabo Protocol and seek input from underrepresented regions.

[16] Ibid 23.
[17] Ibid 23.
[18] Ibid 24.

77. Members emphasized that the Commission should consider judicial decisions, academic writings, and evolving practice alongside written State comments, accounting for both executive and judicial perspectives.[19] State silence, such as refraining from exercising jurisdiction, was noted as relevant for customary international law. The draft articles were seen by some as progressive development rather than mere codification, offering added value, though care was urged to avoid provisions that could harm international relations. Members stressed balancing State sovereignty with accountability for serious crimes, ensuring immunity does not obstruct investigations or evidence, while leaving certain policy matters for State negotiation. A proposal suggested adding a new draft article reflecting the ICJ's judgment in *Certain Questions of Mutual Assistance in Criminal Matters*, supported by the principle of *aut dedere aut judicare*. Members hoped the second reading would clarify unresolved issues, including civil versus criminal immunity and inconsistencies in the draft articles.

78. Members emphasized that immunity does not prevent accountability, while highlighting sovereign equality, stability of State relations, and the exceptional nature of draft article 7.[20] Divergent views on draft article 7 were noted, with some supporting its retention and others expressing reservations. Members stressed the need for consensus to enhance the Commission's credibility and for commentaries to reflect varied State and member perspectives. Concerns included overrepresentation of certain States in cited case law, insufficient global State practice, pending court decisions, and the importance of statements in the Sixth Committee. The relevance of customary international law practice, as per conclusion 8, was recalled.

79. Members expressed differing views on whether draft article 7 reflects customary international law.[21] Some argued it did, citing longstanding State practice and treaty exceptions, while others contended that a "general trend" was insufficient to establish *opinio juris*, viewing the draft article as progressive development. Concerns were raised about irrelevant examples in the second report and the need for appropriate case law in the commentary. The importance of assessing whether immunity could cause impunity was emphasized, with reference to ICJ,

[19] Ibid 24.
[20] Ibid 25.
[21] Ibid 25.

African Court, and ECHR jurisprudence. Members also debated addressing territorial exceptions for crimes by foreign officials in the forum State.

80. Members generally supported retaining a list of crimes in paragraph 1 of draft article 7 but emphasized it should not be exhaustive, allowing for future additions.[22] Concerns were raised that an open-ended list could undermine legal certainty or allow abuse. Clear criteria for inclusion, based on State recognition and distinction between treaty-based and customary international crimes, were deemed essential, possibly developed in the commentary. Consideration was suggested for certain crimes in the Malabo Protocol, and clarity on official acts was stressed. Members generally supported keeping a list of crimes in paragraph 1 of draft article 7, emphasizing it should be non-exhaustive to allow for future additions, given their impact on the international community. Concerns were raised that an open-ended list could undermine legal certainty or allow abuse. Clear criteria for inclusion, based on State recognition and distinguishing treaty-based from customary international crimes, were considered essential and could be developed in the commentary. Certain crimes in the Malabo Protocol were suggested for inclusion, while terrorism, despite being grave, was excluded due to the lack of an agreed definition, as noted in the first-reading commentary. Members suggested aligning draft article 7 and its annex with the 2022 draft conclusions on jus cogens, particularly draft conclusion 23 and its annex. Some proposed adding the Geneva Conventions and Additional Protocol I for war crimes. While concerns were raised about reliance on the Rome Statute and non-universally ratified treaties, others supported referencing them as part of customary international law. It was emphasized that definitions reflect current law, and some members suggested deleting paragraph 2 and the annex, placing references instead in the commentary.

81. Members highlighted that Part Four ensures fair trial safeguards for foreign State officials, preventing abuse or politicization of criminal jurisdiction, upholding sovereign equality, and maintaining peaceful State relations.[23] The provisions guide national authorities and reconcile divergent State positions. Some members cautioned that the draft articles might overemphasize immunity, stressing the need to balance protections with enabling criminal

[22] Ibid 26.
[23] Ibid 27.

jurisdiction and combating impunity, ensuring precise formulation of safeguards especially regarding notification so as to avoid legal uncertainty or weakening official protections. Members noted that some Part Four provisions reflect progressive development rather than established State practice, particularly on notification and waiver, and should be seen as guidelines. While some opposed making Part Four non-binding, including these safeguards prevents future abuses and aligns with the project's approach. Proposed textual changes were broadly supported, with concerns addressable in the commentary. It was suggested that procedural rules clarify distinctions between immunity *ratione personae* and *ratione materiae*, especially in draft articles 10, 14, 15, and 16, and that the scope of "criminal jurisdiction" be addressed in draft article 2.

82. Members supported changes to draft article 8, noting that rewording clarified that procedural safeguards apply to official acts, including at early stages. Dividing the article into two paragraphs improved clarity.[24] Concerns included ambiguous wording, weakening the link to draft article 7, and removing "current or former," which could obscure ongoing immunity. Suggestions focused on clearer wording and careful handling of the relationship between safeguards and immunity *ratione personae*. Members called for the commentary to clarify the scope of jurisdictional acts, distinguish between immunity *ratione personae* and *materiae*, and explain the relationship between draft article 7 and Part Four.

83. Members debated draft article 9. Some supported adding "as far as practicable" for urgent cases, while others worried it might create uncertainty.[25] Opinions differed on adding "the immunity of" before "an official of another State." The separation of examination and determination of immunity in draft articles 9 and 14 was welcomed, though some suggested merging them. Clarification was requested on the nature, timing, and consequences of the examination. Concerns about "inviolability" were raised, with suggestions to define it in draft article 2 and explain it in the commentary.

[24] Ibid 28.
[25] Ibid 28-29.

84. Members supported allowing exceptions to draft article 10's notification requirement when confidentiality or ongoing investigations could be at risk, with examples provided in the commentary to prevent abuse.[26] Some worried this might give too much discretion to the forum State. Suggestions included clarifying when notification is required, adjusting paragraph 2 for flexibility, and removing references to mutual legal assistance treaties. While some questioned its basis in State practice, others stressed the importance of maintaining notification as a key procedural safeguard.

85. Members discussed draft article 11, emphasizing that immunity should apply *proprio motu* by the forum State, regardless of formal invocation, though some argued invocation should be required, citing ICJ precedent.[27] Clarification was sought on the grounds, legal effect, and procedural consequences of invocation, including its timing and link to determination, noting it should not create a presumption of immunity. Support was expressed for express, written invocation, though oral invocation in urgent cases was suggested. Some questioned the basis in State practice and proposed revising or deleting paragraph 2. Paragraph 3's reference to mutual legal assistance treaties was supported for removal to avoid redundancy.

86. As regards draft article 12 pertaining to waiver of immunities, members supported clarifying that waivers must be express and in writing, granted either by the official or at the forum State's request, and can be partial.[28] Views differed on revocation: some favoured irrevocability for certainty, others allowed limited exceptions. The commentary should distinguish between revocation and invalidity, which applies in cases like coercion, fraud, or error, in line with the Vienna Convention. References to mutual legal assistance treaties in paragraph 3 were removed for clarity.

87. Members supported keeping draft article 13, noting it offered practical guidance, respected the discretionary nature of information requests, and promoted bilateral communication to prevent misunderstandings.[29] The removal of references to mutual legal

[26] Ibid 29.
[27] Ibid 30.
[28] Ibid 30.
[29] Ibid 30-31.

assistance treaties in paragraph 3 was also welcomed. Members requested the commentary clarify handling of confidential information, including personal data and national security, and ensure that refusing to provide information does not negatively affect the assessment of immunity.

88. Members supported keeping draft article 14 and keeping articles 9 and 14 separate, with their link explained in the commentary.[30] Paragraph 2 should remove the waiver reference, and paragraph 4 should focus on coercive acts affecting immunity. "Inviolability" could be explained in the commentary, as it applies beyond immunity *ratione personae*.

89. Members supported retaining draft article 15, noting it balanced the interests of the forum State and the State of the official.[31] Transfer should generally be mandatory if the State of the official agrees, with the commentary explaining its discretionary nature, conditions, and the State's obligation to promptly prosecute and keep the forum State informed. Paragraph 4 serves as a guarantee against impunity, while the presence of diplomatic representatives remains a matter for the forum State's judicial authorities.

90. Members supported keeping draft article 16, highlighting its important guidance role despite existing protections.[32] It was proposed to add a reference to international law in paragraph 3, which currently mentions only the laws and regulations of the forum State.

91. Several members supported retaining draft article 17, noting it balanced the interests of the forum State and the State of the official.[33] It was proposed that the provision be presented as non-binding or that the commentary clarify the basis and flexibility of consultations. Members also emphasized that the provision includes the obligation to notify, reflecting States' comments and ensuring clarity on procedural expectations.

[30] Ibid 31.
[31] Ibid 31.
[32] Ibid 31.
[33] Ibid 31-32.

92. Several members supported retaining draft article 18, noting its potential importance in a future treaty and that some treaties cited in the draft annex include compromissory clauses.[34] It was emphasized that pending dispute settlement, the situation of the State official in the forum State should be carefully considered, including the possibility of staying domestic proceedings and establishing time limits. Members suggested clarifying in the commentary the effects of initiating dispute settlement on national proceedings. Views differed on adding an opt-out for ICJ jurisdiction, with some seeing it as allowing alternative peaceful dispute resolution, but most agreed such decisions should be left to States.

C. Present status and future work

93. Several members agreed with the special rapporteur that draft articles were the most suitable format for the topic's outcome, noting that prior work had proceeded on this assumption and changing the approach could affect substance.[35] Draft articles were seen as a potential foundation for negotiating an international instrument. Views differed on recommending the draft articles to the General Assembly: some supported suggesting them as a basis for treaty negotiations, respecting State sovereignty and the Commission-Sixth Committee separation, while others considered it premature. Some favoured a two-step approach or using text from prior draft articles on crimes against humanity. Members also debated the pace of the second reading, with some urging thorough consideration and others advocating expeditious completion, possibly by the seventy-seventh session.[36]

D. Observations and comments of the AALCO Secretariat

94. The Commission considers draft articles the most appropriate format for the outcome of this topic. They could serve as a foundation for the negotiation of an international instrument, while preserving the sovereign rights of States. Member States may reflect on the benefits of adopting draft articles as a platform for multilateral negotiations.

[34] Ibid 32.
[35] Ibid 32-33.
[36] Ibid 33.

95. The second reading aims to streamline the first-reading texts, revising only where compelling reasons exist. Member States may consider whether to follow a minimalist approach or use this stage to address gaps, including issues such as crimes committed in the territory of the forum State, to meet diverse State expectations.

96. Draft articles, including procedural safeguards, aim to reconcile State immunity with accountability for serious international crimes. Member States may assess how the provisions uphold legal certainty, protect fair trial rights, and prevent impunity, particularly in contexts where national authorities exercise criminal jurisdiction.

97. Provisions on notification, waiver, consultation, and examination of immunity emphasize clarity, flexibility, and practical guidance. Member States may consider the importance of commentary in guiding interpretation, while avoiding ambiguity, legal uncertainty, or weakening of safeguards for State officials.

98. Concerns were raised about limited geographical representation in case law and State practice. The Secretariat encourages enhanced engagement and consultation with Afro-Asian Member States, and consideration of regional instruments, such as the Malabo Protocol, to ensure broader perspectives are incorporated. Such participation will enhance the legitimacy, relevance, and credibility of the draft articles.

III. SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

A. Background

99. At its sixty-ninth session (2017), the Commission decided to include the topic "Succession of States in respect of State responsibility" in its programme of work and appointed Mr. Pavel Šturma as special rapporteur. The General Assembly, in its resolution 72/116 of 7 December 2017, took note of the decision of the Commission to include the topic in its programme of work.

100. The special rapporteur submitted five reports from 2017 to 2022.[37] The Commission also had before it, at the seventy-first session (2019), a memorandum[38] prepared by the Secretariat providing information on treaties which may be of relevance to its future work on the topic. Following the debate on each report, the Commission decided to refer the proposals for draft articles made by the special rapporteur to the Drafting Committee. The Commission heard interim reports and statements from the successive Chairs of the Drafting Committee on succession of States in respect of State responsibility at the sixty-ninth to seventy-third sessions (2017 to 2019, 2021 and 2022).

101. At its seventy-third session (2022), on 17 May 2022, the Commission decided, on the recommendation of the special rapporteur, to instruct the Drafting Committee to proceed with the preparation of draft guidelines on the basis of the provisions previously referred to the Drafting Committee (including those provisions provisionally adopted by the Commission at previous sessions), taking into account the debate held in the plenary on the special rapporteur's fifth report.

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[37] ILC, 'First report on succession of States in respect of State responsibility' (31 May 2017) UN Doc. A/CN.4/708; ILC, 'Second report on succession of States in respect of State responsibility' (6 April 2018) UN Doc. A/CN.4/719; ILC, 'Third report on succession of States in respect of State responsibility' (2 May 2019) UN Doc.; ILC, 'Fourth report on succession of States in respect of State responsibility' (27 March 2020) UN Doc. A/CN.4/743; ILC, 'Fifth report on succession of States in respect of State responsibility' (1 April 2022) UN Doc. A/CN.4/751.

[38] ILC, 'Memorandum by the Secretariat, Information on treaties which may be of relevance to the future work of the Commission on the topic' (20 March 2019) UN Doc. A/CN.4/730.

102. Also at its seventy-third session, the Commission provisionally adopted, with commentaries, draft guidelines 6, 10, 10 bis and 11, which had been provisionally adopted by the Drafting Committee in 2018 and 2021, as well as draft guidelines 7 bis, 12, 13, 13 bis, 14, 15 and 15 bis, which were provisionally adopted by the Drafting Committee in 2022. As a result of the change of the proposed form of the outcome, the Commission also took note of draft articles 1, 2, 5, 7, 8 and 9, as revised by the Drafting Committee to be draft guidelines.

103. At its seventy-fourth session (2023), the Commission had no report before it on the topic, as the special rapporteur was no longer a member of the Commission. At its 3621st meeting, on 10 May 2023, the Commission decided to establish a Working Group on the topic and appointed Mr. August Reinisch as its Chair. The Working Group decided to recommend that the Commission continue its consideration of the topic, while refraining, at that stage, from proceeding with the appointment of a new special rapporteur. It further recommended that the Working Group be re-established at the seventy-fifth session (2024) of the Commission, with the same open-ended composition, with a view to undertaking further reflection on the way forward for the topic and making a recommendation thereon, taking into account the views expressed, and the options identified, in the Working Group. At its 3648th meeting, on 27 July 2023, the Commission took note of the oral report of the Chair of the Working Group, including the recommendations contained therein.

104. At its seventy-fifth session (2024), the Commission re-established the working group, with Mr. August Reinisch as Chair. At its 3694th meeting, on 26 July 2024, the Commission considered and took note of the report of the Working Group. At the same meeting, the Commission, having considered the recommendations of the Working Group:

a. decided to establish at its seventy-sixth session (2025) a Working Group on succession of States in respect of State responsibility for the purpose of drafting a report that would bring the work of the Commission on the topic to an end;

b. decided that the report would contain a summary of the difficulties that the Commission would face if it were to continue its work on the topic and explain the reasons for the discontinuance of such work; and

c. decided to appoint Mr. Bimal N. Patel as Chair of the Working Group to be established at the seventy-sixth session of the Commission and recommended that the Chair be encouraged to prepare the draft report of the Working Group in advance of the session, in close collaboration with interested members.

B. Consideration of the topic at the seventy-sixth session

105. At its 3702nd meeting, on 28 April 2025, the Commission decided to establish a Working Group of the Whole on the topic, further to the decision taken at its 3694th meeting, and appointed Mr. Bimal N. Patel as Chair of the Working Group. As a consequence of the reduction of the length of the present session, the Working Group held one meeting, on 22 May 2025. At its 3719th meeting, on 26 May 2025, the Commission took note of the oral report of the Chair of the Working Group.

C. Report of the Working Group

106. The Working Group had before it a draft report prepared by its Chair in advance of the present session.[39] As a consequence of the reduction of the length of the session, the Working Group held a single meeting on 22 May 2025, with duration of one and a half hours. The Working Group regretted that this was not sufficient time to allow for an in-depth consideration of the draft report. The Chair of the Working Group recalled the informal inter-sessional meeting held on the topic in December 2024 and presented a brief introduction to the draft report. The Working Group held a preliminary exchange of views and subsequently took note of the draft report.

107. Members of the Working Group paid tribute to the work of the previous special rapporteur for the topic, Mr. Pavel Šturma, which had made a substantial contribution to the Commission's understanding of the topic. Members also expressed gratitude to the previous Chair of the working group on the topic, Mr. August Reinisch, for his leadership.

[39] ILC, 'Draft report of the Working Group on succession of States in respect of State responsibility, by Bimal N. Patel, Chair of the Working Group' (27 February 2025) UN Doc. A/CN.4/L.1004.

108. Members of the Working Group generally reiterated their support for the decision to discontinue the work on the topic. It was suggested that the mandate of the Working Group to implement that decision should be more explicitly reflected in the draft report. Members recalled a number of the objective factors that had led to the discontinuation. Several members emphasized the lack of sufficient or consistent State practice, which posed a challenge for codification. The lack of regional representation in the practice, in particular that of African and Asian States, was also observed. The tension between the clean-slate and automatic succession approaches was recalled. It was also highlighted that the Commission's work had revealed that many States preferred to resolve questions concerning the succession of States in respect of State responsibility through the conclusion of ad hoc agreements.

109. While members of the Working Group generally welcomed the draft report, as well as the inter-sessional work contributing to its preparation, they expressed a desire to consider it paragraph by paragraph. Several members expressed appreciation for the thorough summary of the history of the topic and the problems the Commission would face were it to continue its work. A number of members expressed support for further streamlining the text of the draft report.

110. Members of the Working Group expressed views on the sections of the draft report that related to possible avenues for future enquiry into the topic. Several members stressed the importance of avoiding giving the impression that the Commission would continue its work on the topic. It was suggested that the section should be deleted or, if kept, reframed in more hypothetical or concise terms. The need to avoid further substantive research into the topic was underscored.

111. Several members of the Working Group considered that the annex to the draft report, following the evolution of the draft articles to draft guidelines, was a useful reference. It was suggested that the term "evolution" might not best capture the change in format of the draft provisions.

112. A number of members of the Working Group expressed appreciation for the ongoing work of the Chair on a bibliography on the topic, including works in all six official languages of the United Nations. The Chair invited members to submit additional references for inclusion in a revised version of the bibliography to be prepared for the seventy-seventh session. He also thanked the Secretariat for its continued assistance.

D. Future programme of work

113. The Chair reported the expectation of the Working Group that it would meet at the seventy-seventh session of the Commission with the hope that it would be given sufficient time to consider and adopt its report, allowing the work on the topic to come to an end. He invited members to send him written comments on the draft report and announced his intention to prepare a revised and more concise version in advance of the seventy-seventh session. He expressed the hope that the revised draft report would put the Working Group in a good position to proceed efficiently and conclude its work on the topic at the seventy-seventh session.

E. Observations and comments of the AALCO Secretariat

114. The consensus within the Working Group at the seventy-fifth and seventy-sixth sessions of the ILC to bring the Commission's work on this topic to a close, owing to persistent objective challenges is well noted.

115. The Secretariat supports the Working Group's recommendation that the ILC finalize its work on this topic through the adoption of a report at its seventy-seventh session, reflecting a balanced account of both the substantive progress achieved and the limitations encountered. The Secretariat encourages AALCO Member States to participate actively in the completion of this final phase, to ensure that the final report adequately reflects the experiences and perspectives of the Afro-Asian region. Finally, the Secretariat appreciates the opportunity for members to provide further bibliographic references.

IV. GENERAL PRINCIPLES OF LAW

A. Background

116. The International Law Commission (ILC) included "General Principles of Law" in its programme of work at its seventieth session (2018), appointing Mr. Marcelo Vázquez-Bermúdez as special rapporteur.[40] The General Assembly noted this decision in resolution 73/265 (2018).[41] The ILC examined the special rapporteur's first report in 2019, his second report along with a Secretariat memorandum in 2021, and his third report in 2022.[42] At its seventy-fourth session in 2023, drawing on these reports, the Commission provisionally adopted 11 draft conclusions on general principles of law, with commentaries, on first reading.[43]

B. Consideration of the topic at the seventy-sixth session (2025)

117. At its seventy-sixth session, the ILC considered the special rapporteur's fourth report, which included a bibliography and comments from Governments on the draft conclusions adopted on first reading.[44] The report reviewed these comments and proposed recommendations to the General Assembly. Between 5 and 12 May 2025 (3707th–3712th meetings), the Commission debated the report and referred draft conclusions 1 to 12 to the Drafting Committee, taking into account Governments' input and plenary discussions. On 27 May 2025 (3721st meeting), the Chair of the Drafting Committee presented its report, and the Commission noted the Committee's provisional adoption of draft conclusions 1 to 12 on second reading. However, final adoption by the Commission was postponed to the seventy-seventh session due to the shortened seventy-sixth session.[45]

[40] International Law Commission, 'Report of the International Law Commission on the Work of Its Seventy-Sixth Session' (2025) UN Doc A/80/10 <https://legal.un.org/ilc/reports/2025/> accessed 23 August 2025.
[41] Ibid 58.
[42] Ibid 58.
[43] Ibid 58.
[44] Ibid 58.
[45] Ibid 58.

Introduction by the special rapporteur of the report

118. The special rapporteur emphasized that general principles of law, being one of the sources of international law under Article 38(1) (c) of the ICJ Statute, required thorough and careful treatment.[46] He stressed that the Commission should, as in its work on other sources of international law, maintain a balance between rigour and flexibility. He observed that since the first reading of the draft conclusions at the Commission's seventy-fourth session, various stakeholders had commented on the topic. In this context, delegations generally welcomed the draft conclusions, noting their utility for those tasked with identifying and applying general principles of law, and expressed support for their intended final form. He explained that the fourth report contained three sections: introduction; comments and observations from Governments, both general and specific; and his proposals for the final outcome. He added that the bibliography would be issued as an addendum and, due to the shortened session, the second reading could not be completed.

119. Regarding draft conclusion 1, the special rapporteur explained that it was introductory and required no changes.[47] The Commission's starting point was Article 38(1)(c) of the ICJ Statute, considered in light of practice, jurisprudence, and teachings. The idea of including an illustrative list of general principles of law was rejected, as it could wrongly suggest that such principles were limited to the listed examples.

120. In relation to draft conclusion 2, the special rapporteur referred to the term "community of nations" in the ICCPR and emphasized the central issue of who can recognize and develop general principles of law.[48] He stressed that States play the main role, though international organizations and others may contribute, and proposed three new paragraphs. He also addressed regional or non-universal principles, citing the Caribbean Court of Justice, and introduced draft conclusion 12 with a "without prejudice" clause.

[46] Ibid 59.
[47] Ibid 59.
[48] Ibid 59.

121. On draft conclusion 3, the special rapporteur noted that States unanimously accepted general principles derived from national legal systems.[49] While some States recognized that such principles could also emerge within the international legal system, others remained doubtful. He reaffirmed that practice, jurisprudence, and scholarly writings supported their existence, emphasizing that international law, like any legal system, could generate such principles. He added that his fourth report clarified the distinction from customary international law, which rests on different methods of identification.

122. The special rapporteur left draft conclusions 4, 5, and 6 unchanged but acknowledged comments made by States.[50] He proposed addressing key issues through the commentary, especially by expanding the commentary on draft conclusion 6 to clarify questions of compatibility, applicability, and the criteria used to determine such compatibility.

123. On draft conclusion 7, the special rapporteur recalled that States remained divided over the second category of general principles of law.[51] A key concern was the methodology for identifying such principles, with some States arguing it was too vague and might bypass the need for State consent in creating international norms. He suggested clarifying the methodology in the commentary, noting that, as outlined in his fourth report, it relied on both inductive and deductive approaches. He proposed no textual changes to draft conclusion 7.

124. The special rapporteur made no changes to draft conclusion 8, noting its broad support from States.[52] However, he suggested that the Commission include clarifications in the commentary to address certain issues raised during discussions.

125. The special rapporteur proposed revising draft conclusion 9 in the backdrop of comments on the phrase "most highly qualified publicists," aiming to adopt broader language that better reflects diversity.[53]

[49] Ibid 60.
[50] Ibid 60.
[51] Ibid 60.
[52] Ibid 60.
[53] Ibid 60.

126. For draft conclusion 10, the special rapporteur suggested reversing the order of paragraphs 1 and 2.[54] Responding to State comments, he explained that general principles are not always gap-fillers, so the change aimed to reduce the emphasis on paragraph 1, which described only their usual function.

127. The special rapporteur made no changes to draft conclusion 11, noting broad State support.[55] He emphasized that general principles of law hold no hierarchy over other sources, aligning with the Commission's stance on fragmentation. He also cautioned against calling them a "subsidiary source," clarifying that, under Article 38(1)(c) of the ICJ Statute, they differ from subsidiary means.

Summary of the Debate

128. Several members expressed concern that vague terminology weakened the draft conclusions, particularly in distinguishing general principles of law as an autonomous source from jus cogens norms and broader principles of international law, which merely restate treaty or customary rules.[56] They urged clearer commentary to separate these concepts, noting that inconsistencies likely explained many State requests for clarification, and cautioned against excessive progressive development, emphasizing reliance on State consent and practice. Views diverged on defining general principles of law: some supported State proposals, while others opposed, citing their inherent ambiguity, context-specific nature, and limited invocation, with one suggestion to instead define "general" to clarify scope. Members also highlighted limited State feedback, particularly from Asia and Africa, stressing that the second reading should prioritize inclusive State views and allow major revisions only when necessary.

129. On draft conclusion 1 (Scope), members supported keeping the text from the first reading.[57] They agreed that any list of general principles would be incomplete and risk-limiting future developments. While some felt a non-exhaustive list could add practical value and focus,

[54] Ibid 60.
[55] Ibid 60.
[56] Ibid 61.
[57] Ibid 61.

it was stressed that the topic should establish criteria for identifying principles, not define their content.

130. On draft conclusion 2 (Recognition), members agreed that "civilized nations" in Article 38(1)(c) of the ICJ Statute was outdated and should be replaced.[58] Suggestions included "community of States" for certainty, "international community" to reflect organizations, or retaining "community of nations" for breadth, with reference to ICCPR Article 15(2). Members stressed that "recognition" follows a principle's existence, not its creation, and should primarily reflect State views, ensuring only broadly representative principles are incorporated into international law. On the new paragraphs 2–4 of draft conclusion 2, members had divided views. Supporters welcomed them, noting parallels with work on customary law and jus cogens, and recognized a role for international organizations, citing examples like the Malabo Protocol and AU Model Law. Critics found the text unclear, blurring the recognition and existence of principles, and their distinction from customary law. Many suggested shifting such issues to the commentary for nuance. Questions arose over terms like "in certain cases" and whether organizations fit Article 38(1)(c). Proposals ranged from revision and clarification to retaining the first-reading version. On draft conclusion 12, most members supported adding a "without prejudice" clause, citing consistency with recent developments and advisory opinions of the Inter-American Court of Human Rights. Others opposed creating a new provision, preferring commentary to draft conclusion 2, since no State practice or endorsement supported regional principles. Concerns were also raised about overlap with draft conclusion 7(2), with members requesting clarification on how the two provisions would interact. On the persistent objector rule, several members rejected its application to general principles of law, stressing there was no supporting practice or jurisprudence. Some, however, argued the issue merited further research and commentary. One view held that, since State consent is itself a general principle, a persistent objection could shield a State from being bound by a general principle formed within the international legal system.

131. On draft conclusion 3(a), many members supported retaining the first category of general principles derived from national legal systems, emphasizing its firm grounding in Article

[58] Ibid 61.

38(1)(c) of the ICJ Statute and broad State support.[59] While some considered the second category more progressive in nature, others noted that certain principles could fall under both categories. Members cautioned against labelling draft conclusion 3 exclusively as codification or progressive development, recognizing that it may contain elements of both.

132. On draft conclusion 3(b), members were divided over recognizing a second category of principles formed within the international legal system. Supporters argued it reflected international law's evolution since the PCIJ Statute and was supported by treaties, State practice, and scholarship, while stressing the need for explicit State consent. Others doubted the adequacy of practice and teachings to confirm this category, warning against excessive reliance on jurisprudence. Several members questioned the special rapporteur's analogy between domestic and international law, noting that principles become "general" only when recognized across systems. Concerns included unclear methodology for identifying such principles. Suggestions included acknowledging opposing State views in the commentary, clarifying methodology with examples, or even deleting subparagraph (b) and draft conclusion 7. If retained, members urged detailed commentary specifying how and when these principles could arise.

133. On draft conclusion 4, members supported the two-step methodology for identifying general principles from national legal systems.[60] Some favoured a normative evaluation assessing transposability and compatibility with international law over a purely empirical approach, endorsing the phrase "may be transposable to the international legal system" in paragraph (b). It was stressed that principles conflicting with fundamental international norms must be excluded. Others emphasized the inductive method, grounded in repetition across systems. Since States generally welcomed draft conclusions 4–6, members suggested refining methodology and evaluation through commentary rather than textual revisions.

134. On draft conclusion 5, members broadly supported the text from first reading.[61] They emphasized a two-step comparative analysis: first identifying a principle within a domestic legal system, then verifying its existence across other systems globally. This analysis should consider

[59] Ibid 63.
[60] Ibid 64.
[61] Ibid 65.

not only geography but also diverse legal, cultural, social, linguistic, and economic traditions. "Common" was understood as broad and representative, not universal. For paragraph 3, members highlighted the role of the highest courts and doctrine, while stressing State consent as central. Concerns included overreliance on judicial discretion, ambiguity in "other relevant materials," and a possible overlap with draft conclusion 8.

135. On draft conclusion 6, some members supported the first-reading text, praising its balance between rigor and flexibility and its clarification that formal State recognition is unnecessary.[62] They suggested replacing "transposition" with terms like "incorporation" or "reception" to avoid implying formality. It was stressed that compatibility does not equal recognition and that requiring evidence of transposition safeguards against judicial activism by ensuring implicit State consent. Others criticized the vagueness of "compatibility" and its weak link to consent, calling for examples, clearer guidance, and objective indicators. Some proposed conditioning transposition on explicit recognition and noted a mismatch between the text and title.

136. On draft conclusion 7(1), many members criticized the term "intrinsic" as vague and insufficient to guarantee State consent, urging objective criteria such as broad and representative acceptance, consistency with the structure of international law, and legal binding force.[63] It was noted that more States opposed than supported the current wording. Concerns were also raised that the inductive–deductive methodology risked conflating general principles with customary law, as many cited examples stemmed from treaty or custom. Several members further observed that the methodology in paragraph 1 lacked clarity and overlapped with draft conclusion 4, suggesting either clearer provisions or elaboration in the commentary. On draft conclusion 7(2), members highlighted its ambiguity and overlap with paragraph 1, with some proposing deletion, especially given draft conclusion 12, while others supported retaining it as a "without prejudice" clause distinguishing principles intrinsic to international law from those implicit in specialized fields.

[62] Ibid 65.
[63] Ibid 66.

137. Draft conclusion 8 received broad support, though some States questioned its retention given the Commission's parallel work on subsidiary means.[64] Members emphasized ensuring consistency between the two projects and suggested the commentary clarify that draft conclusion 8 is without prejudice to ongoing work. Some proposed deleting draft conclusions 8 and 9, while others recommended aligning them with the subsidiary means study and adding detail. Members stressed distinguishing judicial decisions' evidentiary use under draft conclusion 5 from their role as subsidiary means, clarifying criteria for weighting, representativeness, and the greater weight of higher national courts, though some preferred no distinction, consistent with Article 38(1)(d). A title change was also suggested.

138. Members generally supported draft conclusion 9, emphasizing the importance of representativeness when assessing teachings.[65] They stressed consistency with the Commission's work on subsidiary means, suggesting either no major changes or alignment with parallel conclusions. The text could clarify that teachings, especially reflecting converging views of competent international lawyers from diverse systems and regions, serve as subsidiary means for identifying general principles of law. Members valued retaining references to subsidiary means, as in customary international law, while cautioning that case-by-case reliance could allow subjective interpretation. Support was expressed for including both written and unwritten teachings and clarifying the term "most highly qualified."

139. On Draft Conclusion 10, members emphasized that general principles of law play a key role in filling gaps and preventing *non liquet*, while also serving broader functions, including as a basis for rights and obligations.[66] Some proposed reversing paragraph order to highlight this broader role, while others preferred retaining gap-filling as primary. Concerns included blurring the distinction between the two categories of principles and the risk of including non-binding norms like good faith. Suggestions included restructuring paragraph 1 to reflect functions clearly, removing references to "coherence of the international legal system" and "primary and secondary rules," and avoiding terms implying bypass of State consent. Paragraph 2 was seen as

[64] Ibid 67.
[65] Ibid 67.
[66] Ibid 68.

overly descriptive, with proposals to make it more normative by using "may be" instead of "mainly" for interpretive flexibility.

140. Members broadly supported paragraph 1 of draft conclusion 11, agreeing that general principles of law do not occupy a hierarchical position relative to treaties or customary international law.[67] Some noted a perceived tension with draft conclusion 10, which emphasized the gap-filling and complementary role of general principles, suggesting this reflected *lex specialis* or sequential application rather than hierarchy, and that the commentary provide guidance with examples. A further view proposed distinguishing between categories: principles formed within international law are non-hierarchical, while those derived from national systems apply only when treaties and custom are silent. Members emphasized clarifying the relationship between general principles and customary international law, noting that general principles should not be seen as weaker forms of custom. The same norm may exist in multiple sources, as in ICJ's Nicaragua v. United States. Challenges arise when principles parallel custom: without State practice and *opinio juris*, they remain principles, but may merge into custom with sufficient practice. Commentary should illustrate this overlap with examples. The persistent objector rule was noted as absent, raising questions about its applicability. Some argued it could apply to principles formed within international law, but not to those from national systems, highlighting potential conceptual inconsistencies if States can object to customary law but not to identical principles. Regarding paragraph 3, concerns were raised over contradictions with paragraph 2 and draft conclusion 10. Questions arose on how gap-filling principles could conflict with treaties or custom, and circular reasoning risks when identifying such principles with reference to existing rules. An alternative suggested retaining paragraphs 2 and 3 but limiting them to the second category, with commentary clarifying conflicts with *jus cogens* norms, which would always prevail.

141. On draft conclusion 12, some members supported its inclusion, noting that general principles of law, like customary rules, can operate at universal or regional levels.[68] Others did not oppose the idea but called for clarity on whether it refers to principles applicable only in

[67] Ibid 69.
[68] Ibid 70.

bilateral, regional, or sub regional contexts; within specific regimes; or with limited subject-matter scope, such as procedural rules. A proposal suggested specifying that such principles may apply only between certain subjects of international law, similar to the approach on customary law. Unlike jus cogens, general principles may allow regional or context-specific variation. Opponents argued that draft conclusion 12 could create a new category beyond draft conclusion 7 without sufficient State practice or evidence of regional principles, as such principles would bind only certain States or organizations. It was acknowledged, however, that principles with narrower scope could qualify as general principles if they meet the draft conclusion 4 conditions. Suggestions included refining the title, replacing "limited" with "specific" or "particular," aligning the text with customary law practice, and referencing the Eurasian Economic Union's experience.

C. Present status and future work

142. Several members agreed that the work on general principles of law should conclude in the form of draft conclusions, in line with the Commission's approach to sources of international law.[69] They emphasized that, given the nuanced nature of the topic and potential for varied interpretation, careful drafting was essential. For the General Assembly, it was suggested that the draft conclusions be noted, annexed to a resolution, widely disseminated, and shared with States and relevant actors for practical application. The Commission considered two options for proceeding: a thorough review of the first-reading text to resolve key issues or maintaining the existing text with clarifications added in the commentary, as recommended by the special rapporteur. While a full review was acknowledged as potentially unfeasible, members highlighted the importance of drafting a new conclusion clarifying how to determine the existence of a general principle of law formed within the international legal system under Article 38(1)(c) of the ICJ Statute. If the second option were chosen, the commentary would need to be particularly detailed and nuanced. Although the shortened session prevented completing the second reading, members expressed hope for its conclusion at the next session.

[69] Ibid 71.

143. In conclusion, the special rapporteur thanked the Commission for constructive comments and support and welcomed interest from academic and regional organizations. He emphasized maintaining the first-reading structure and content unless compelling reasons warranted changes, underscored the need for rigorous drafting, and highlighted the importance of precise terminology to distinguish general principles under Article 38(1)(c) from other principles. He supported including illustrative examples in the commentary rather than a separate list. The special rapporteur conveyed his position on Draft Articles 1 to 12 to the Commission.

D. Observations and comments of the AALCO Secretariat

144. The Secretariat notes the ongoing discussions regarding the precise scope of "general principles of law" within the meaning of Article 38(1)(c) of the ICJ Statute. It is important that the final draft conclusions distinguish such principles from other "principles" found in international instruments, to avoid conceptual ambiguities. Member States may wish to consider emphasizing the importance of terminological precision, which remains a central challenge in this exercise.

145. Several delegations in the ILC underscored the need to frame the conclusions in normative rather than descriptive terms. This includes, for example, clarifying the methodology for identifying general principles and ensuring consistency between draft provisions. Member States may reflect on whether the current formulations adequately balance the need for normative guidance while preserving flexibility for diverse legal traditions.

146. The proposed draft conclusion on general principles with a limited or regional scope has attracted both support and reservations. While some States recognize its practical relevance, others caution against creating an additional category of principles without sufficient State practice. Member States may wish to provide their views on whether such principles should be recognized as general principles of law, and if so, under what conditions. The importance of according greater weight to Afro-Asian regional practices on General Principles of Law may be reflected upon.

147. The question of possible conflict between general principles and other sources of international law, including treaties, custom, and *jus cogens* norms, remains delicate and a matter of continued concern. Member States may wish to stress the importance of clarifying these relationships in a manner that safeguards the hierarchy of norms and avoids inconsistencies.

148. The ILC appears inclined to finalize its work in the form of draft conclusions with commentaries. Member States may consider whether this format provides adequate clarity and practical utility, and may also reflect on the recommendations to the General Assembly, particularly with respect to dissemination and application.

V. SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW

A. Background

149. The International Law Commission (ILC) has been considering the topic of sea-level rise in relation to international law since its inclusion in the long-term programme of work in 2018.[70] The topic addresses the legal implications arising from sea-level rise, particularly for low-lying coastal and island States, under three distinct subtopics:[71]

(a) the law of the sea,

(b) statehood, and

(c) the protection of persons affected by sea-level rise.

150. An open-ended Study Group was established to examine the topic comprehensively, drawing on submissions from States, international organisations, and expert bodies.[72] The Study Group has been co-chaired by rotating members of the Commission, with each subtopic led by designated coordinators. Between 2019 and 2024, the Study Group produced a series of issues papers covering the three subtopics, examining existing treaty and customary law, State practice, jurisprudence and doctrinal writings, and identifying possible legal developments.[73] The Final Report of the Study Group on the topic was adopted on 26 May 2025.[74]

B. Final report of the Co-Chairs

151. At the seventy-sixth session in 2025, the Study Group on sea-level rise in relation to international law was co-chaired by Patrícia Galvão Teles, Nilüfer Oral and Juan José Ruda

[70] ILC, 'Report of the International Law Commission on the work of its seventieth session' (2018) UN Doc A/73/10, 206-207.
[71] ibid.
[72] ILC, 'Sea-level rise in relation to international law: First issues paper by the Co-Chairs of the Study Group' (2019) UN Doc A/CN.4/740.
[73] ILC, 'Sea-level rise in relation to international law: Second issues paper by the Co-Chairs of the Study Group' (2020) UN Doc A/CN.4/749; 'Third issues paper' (2021) UN Doc A/CN.4/752.
[74] ILC, 'Report of the International Law Commission on the work of its seventy-sixth session' A/80/10, para. 77.

Santolaria, who jointly presented the Group's final consolidated report.[75] This document synthesised the work undertaken since the Study Group's establishment in 2019 and integrated the analyses from the three subtopics.[76] The co-chairs noted that the aim of the final consolidated report was both to present the main conclusions reached in the earlier issued papers and to capture the additional reflections, and updates emerging from subsequent debates, State submissions, and developments in relevant international fora.

152. Under the subtopic of the **law of the sea**, the report revisited the central question of the legal stability of baselines and maritime limits in the face of physical changes to the coastline resulting from sea-level rise. The co-chairs summarised the various approaches considered, including maintaining existing baselines and outer limits through domestic legislation or international agreement, as well as interpretative or progressive development of UNCLOS to affirm stability. They recalled that the Study Group had concluded that maintaining stability would promote legal certainty, safeguard maritime entitlements, and protect the rights of affected States.[77] The final report also noted developments in State practice and the positions of regional organisations, such as African Union and ASEAN, supporting such stability[78], while recognising that some issues-such as the treatment of islands and low-tide elevations-would require further clarification in practice.

153. On the **statehood** subtopic, the final consolidated report reviewed the analysis of how sea-level rise may affect the criteria for statehood under international law, including defined territory, permanent population, government, and capacity to enter into relations with other States. The co-chairs noted that while the loss of habitable territory could have severe implications, the continuity of statehood might be preserved under certain legal and political approaches, particularly if the international community adopts a flexible and supportive stance. They recalled the Study Group's consideration of precedents and analogies from situations where States or governments continued to exist despite loss of control over territory, as well as the

[75] ILC, 'Sea-level rise in relation to international law: Final consolidated report of the Co-Chairs' (2025) UN Doc A/CN.4/783, para 2.
[76] ibid para 3.
[77] ibid paras 42-45.
[78] African Union, 'Decision on the African Union Maritime Strategy' (Ext/Assembly/AU/Decl (XI), 2012); ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (adopted 4 November 2002).

importance of maintaining UN membership and treaty participation.[79] The report stressed that recognition by other States and institutional practice would be central to ensuring continuity.

154. The focus for the seventy-sixth session was on the **protection of persons affected by sea-level rise**, where the report provided an updated and more detailed examination. The co-chairs addressed the legal status and rights of individuals and communities displaced either internally or across international borders due to sea-level rise, drawing on international human rights law, international refugee law, international humanitarian law, and disaster law frameworks. They highlighted that while existing legal regimes provide certain protections, such as the prohibition of refoulement, the right to life, and non-discrimination, significant protection gaps remain, particularly for cross-border displacement linked to climate impacts.[80] The report also discussed soft-law instruments, such as the Global Compact for Safe, Orderly and Regular Migration (2018) and the Nansen Initiative Protection Agenda (2015), and considered how they might inform the development of state practice.[81] State responsibility for harm caused or exacerbated by sea-level rise was examined in light of obligations relating to environmental harm, transboundary damage, and the duty to cooperate.

155. Methodologically, the co-chairs explained that the Study Group's approach combined thematic legal analysis of relevant treaties and customary rules with reviews of recent jurisprudence, national and regional policy developments, and academic commentary. Cross-cutting considerations, such as equity, the principle of common but differentiated responsibilities, and intergenerational justice, were integrated into the legal discussion to ensure the analysis was responsive to both normative and practical dimensions. The report also underlined the importance of incorporating the most recent scientific data on projected sea-level rise and its impacts, emphasising that legal analysis must be grounded in reliable climate science.

156. The co-chairs concluded by noting that the Study Group's work had matured into a coherent set of findings and reflections across all three subtopics, which could form the basis for

[79] A/CN.4/783 (n 5) paras 70-73.
[80] ibid paras 110-113.
[81] Global Compact for Safe, Orderly and Regular Migration, UN Doc A/RES/73/195 (19 December 2018); Nansen Initiative, 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change' (2015).

the Commission's final output, whether in the form of draft conclusions, guidelines, or other instruments. They encouraged States and relevant organisations to provide further views and practice, especially on the practical measures for implementing legal principles and ensuring the protection of affected persons.

C. Consideration of the topic at the seventy-sixth session (2025)

157. During its seventy-sixth session in 2025, the International Law Commission considered the final consolidated report of the Co-Chairs of the Study Group on sea-level rise in relation to international law in plenary meetings.[82] Members welcomed the comprehensive nature of the report, noting that it successfully integrated the work completed under the three subtopics into a coherent body of analysis. The Study Group was commended for combining rigorous legal examination with an appreciation of the humanitarian and developmental dimensions of the issue.

158. There was broad consensus among members on the urgent and practical relevance of the topic, particularly for small island developing States and low-lying coastal nations in regions such as the Pacific, Indian Ocean, and parts of the Caribbean and Asia.[83] Many members emphasised that the ILC's work should aim not only to clarify existing law but also to offer guidance that can be operationalized by States facing the consequences of sea-level rise.[84] Some members stressed that the Commission's approach should reflect the interdependence of the three subtopics, recognising that the stability of maritime zones, continuity of statehood, and protection of persons are mutually reinforcing aspects of the same global challenge.

159. On the **law of the sea**, several members expressed strong support for the principle of maintaining the stability of maritime baselines and outer limits notwithstanding physical changes to coastlines, viewing this as a matter of legal certainty and fairness.[85] A few members, however,

[82] International Law Commission, *Report of the International Law Commission on the Work of Its seventy-sixth session* (2025) UN Doc A/80/10.
[83] ibid.
[84] ibid.
[85] ibid.

noted the need to consider potential objections and to ensure that any development in this area is consistent with UNCLOS and its object and purpose.

160. On **statehood**, members acknowledged the complex interplay of legal, political, and practical considerations in ensuring continuity when physical territory is lost or rendered uninhabitable. There was general agreement that international recognition, institutional practice and political will would be decisive and that the Commission's work could help foster a favourable interpretative environment.[86]

161. On **protection of persons**, which is the focus of the 2025 report, members welcomed the Study Group's attention to cross-border displacement, internal migration, and the application of human rights and refugee law frameworks. There was support for mapping existing obligations and identifying gaps, although views diverged on whether the Commission should recommend new binding norms or limit itself to consolidating and clarifying current law.[87] Some members stressed the importance of aligning the ILC's work with ongoing processes in other fora, including the United Nations Framework Convention on Climate Change (UNFCCC), the International Organization for Migration (IOM), and the Office of the United Nations High Commissioner for Refugees (UNHCR), and relevant regional initiatives, to avoid duplication and to maximise coherence.

162. The Commission also discussed the possible form of the final output. While many members favoured developing draft conclusions or guidelines, accompanied by commentaries to explain their basis in existing law and practice, others saw merit in considering draft articles that could serve as the basis for a treaty. It was recognised that the choice of form should reflect the diversity of the subtopics and the different degrees of legal development they involve.

163. In concluding its consideration, the Commission expressed appreciation to the Co-Chairs for their leadership and scholarly contribution and agreed that the Study Group should continue its work with a view to finalising the ILC's output on the topic in the near term. Members

[86] ibid.
[87] ibid.

encouraged States to provide updated practice, positions and proposals, particularly on baseline stability, recognition of statehood and protection mechanisms for persons affected by sea-level rise.

D. Discussion on outputs so far

164. Since the inception of the topic, the Study Group has completed detailed analyses on each of the three subtopics.[88] The work on the law of the sea examined the stability of maritime baselines and limits in the face of physical changes to coastlines, highlighting proposals to maintain existing baselines to ensure certainty and stability of maritime entitlements.[89] The statehood subtopic explored the criteria for statehood under international law and the implications of the possible loss of territory, population displacement, and changes to government functions.[90] The protection of persons subtopic, advanced during the 2025 session, addresses the status, rights, and protection needs of persons affected by sea-level rise, including consideration of displacement and migration, human rights obligations, and the need for international cooperation.[91] These analyses have been informed by State practice, jurisprudence, and interdisciplinary research.[92]

E. Summary of debates

165. Debates within the Commission have reflected a strong and near-unanimous endorsement of the principle that maritime zones, once lawfully established under the United Nations Convention on the Law of the Sea (UNCLOS),[93] should remain stable and unaffected by physical changes to coastlines caused by sea-level rise.[94] Many members stressed that this stability is essential not only for ensuring legal certainty but also for safeguarding the sovereign rights and maritime entitlements of States, particularly those most vulnerable to the impacts of

[88] A/CN.4/783 (n 5) para 3.
[89] ibid paras 42-45.
[90] ibid paras 70-73.
[91] ibid paras 110-113.
[92] ibid para 5.
[93] International Law Commission, *Report of the International Law Commission on the Work of its seventy-sixth session* (2025) UN Doc A/80/10 para 40.
[94] UN Doc A/80/10, para 113.

climate change. Several Asian and African members underscored that for small island developing States in the Pacific and Indian Oceans, as well as low-lying coastal States in West Africa and the Red Sea region, the erosion or submergence of territory could have existential consequences if it were to result in a loss or reduction of maritime jurisdiction.[95]

166. Divergent views emerged on the legal pathway for affirming the stability of maritime zones. Some members such as the Republic of Philippines and the Arab Republic of Egypt[96] supported a progressive development approach through the interpretation of UNCLOS, building on its object and purpose to preserve stability despite physical changes. Others such as South Africa [97] favoured codifying the principle through treaty amendment or a supplementary agreement. A number of African members pointed out that regional positions, such as those expressed by the African Union, already support fixed baselines,[98] and that these could serve as building blocks for a broader multilateral consensus. Several Asian delegations similarly noted that declarations adopted within the Association of Southeast Asian Nations (ASEAN) and other regional fora already recognise the need to maintain maritime limits to prevent disputes.[99]

167. On the issue of statehood, members such as Maldives, Sierra Leone and Ghana [100] acknowledged the unique legal and political challenges posed by the possible loss of habitable territory. Representatives from low-lying coastal States in Africa and South Asia emphasised that the disappearance or uninhabitability of a State's land territory should not be equated with the loss of statehood or international legal personality. These members stressed that continuity of statehood could be preserved through international recognition, continued representation in international organisations, and adaptive governance arrangements, including the maintenance of

[95] UN, *Comments and observations received from Governments on the draft articles on prevention and repression of piracy and armed robbery at sea, UN Doc A/CN.4/736/Add.1 (2020) (Mauritius; Bangladesh; Kenya; Tanzania).*
[96] UN, *Comments and observations received from Governments on the draft articles on prevention and repression of piracy and armed robbery at sea*, UN Doc A/CN.4/736/Add.1 (2020) (Philippines) para 30; UN, *Comments and observations received from Governments on the draft articles on prevention and repression of piracy and armed robbery at sea*, UN Doc A/CN.4/736/Add.1 (2020) (Egypt).
[97] UN, *Comments and observations received from Governments on the draft articles on protection of the atmosphere*, UN Doc A/CN.4/735/Add.1 (2020) (South Africa).
[98] African Union, 'Ext/Assembly/AU/Dec.1(XI) on the African Union Maritime Strategy' (2012).
[99] ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (2002).
[100] UN, *Comments and observations received from Governments on the draft articles on prevention and repression of piracy and armed robbery at sea*, UN Doc A/CN.4/736/Add.1 (2020) (Maldives; Sierra Leone; Ghana).

government functions in exile if necessary. Several African and Asian members highlighted the importance of institutional solidarity in ensuring that displaced populations remain linked to their State of nationality, even in the absence of physical territory.

168. With regard to the protection of persons, the deliberations have revealed significant differences in approach. Many members from Asia and Africa recognised that existing international legal frameworks, i.e. human rights law, refugee law, and disaster law, already provide important protection guarantees, including the prohibition of refoulement, the right to life, and non-discrimination. However, they also pointed to substantial gaps, especially for people displaced across borders by slow-onset climate impacts who do not meet the strict legal definition of a refugee under the 1951 Refugee Convention. Several African members, drawing on experiences from the Kampala Convention on Internally Displaced Persons,[101] argued that regional instruments could serve as models for crafting supplementary protections. Some Asian members such as Indonesia and Bangladesh[102] suggested that soft-law guidelines, model laws, or principles could provide practical assistance to States without necessitating a lengthy treaty-making process. By contrast, some members preferred non-binding conclusions that consolidate and clarify existing obligations, warning against overburdening States with new legal commitments.[103]

169. Across all three subtopics, there was recognition that the Commission's work must complement and not duplicate ongoing initiatives in other international fora. Several members from Africa and Asia stressed that the ILC's analysis should be pragmatic, grounded in scientific evidence, and responsive to the specific needs and vulnerabilities of developing States, ensuring that the final outcome is both legally robust and operationally useful.[104]

[101] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (adopted 23 October 2009, entered into force 6 December 2012).
[102] UN, *Comments and observations received from Governments on the draft articles on prevention and repression of piracy and armed robbery at sea*, UN Doc A/CN.4/736/Add.1 (2020) (Indonesia; Bangladesh).
[103] ILC seventy-sixth session report.
[104] ibid.

F. Present status and future work on the topic

170. With the submission of the final consolidated report at the seventy-sixth session in 2025, the International Law Commission effectively brought to a close the Study Group's structured work on the topic.[105] The consolidated report synthesised over six years of research, analysis, and plenary discussion across the three subtopics-law of the sea, statehood, and the protection of persons affected by sea-level rise. While the Study Group's mandate for this topic has now concluded, the Commission recognised that the legal issues it examined remain of pressing and evolving relevance, particularly in light of accelerating climate impacts and emerging State practice.[106]

171. The Commission noted that the next stage for this body of work lies primarily in the hands of States, regional organisations, and other international fora. The possible forms of practical and legal follow-up on whether this is to be done in the shape of draft conclusions, guidelines with commentaries, or even draft articles capable of serving as a basis for a multilateral treaty, were left open to be developed outside the ILC framework.[107]

172. In this regard, the Commission underscored the importance of continued engagement with affected States, particularly small island developing States and low-lying coastal nations in Asia, Africa, and the Pacific. Such engagement could take the form of regional consultations, submissions of State practice, or incorporation of the report's findings into domestic legislation and maritime policy. The Commission also emphasised the need for close coordination with complementary processes under the UNFCCC, the IOM, the UNHCR, and regional bodies such as the AU, ASEAN, and the PIF.[108]

173. The final report stressed that any future legal development on this subject must be informed by the most recent and reliable scientific data on projected sea-level rise and its environmental, social and economic consequences. The Commission recommended that States

[105] United Nations General Assembly, Final Consolidated Report of Co-chairs of the Study Group on sea-level rise, A/CN.4/783 (n 5) para 5.
[106] ibid para 7.
[107] ibid para 8.
[108] ibid para 10.

and organisations integrate updated climate science into legal and policy planning, and that they monitor and report on emerging jurisprudence and practice relating to baselines, statehood and displacement.

174. Looking ahead, the Commission anticipates that the consolidated report will serve as a catalyst for practical measures for both binding and non-binding that addresses the protection of maritime zones, ensures the continuity of Statehood, and strengthens protection for persons affected by sea-level rise. The report's findings may also inform future codification or progressive development efforts, should States or international organisations decide to reintroduce the topic into the ILC's agenda or pursue negotiations towards an international instrument.

G. Observations and comments of the AALCO Secretariat

175. The AALCO Secretariat notes that sea-level rise poses significant challenges for many AALCO Member States, particularly those in the Asia-Pacific region and low-lying coastal areas. The issues under consideration by the ILC are directly relevant to the long-term security, sovereignty, and rights of these States and their populations. Member States are encouraged to provide information on national legal frameworks, maritime boundary practices and measures to protect persons affected by sea-level rise. Active engagement in the ILC's work will ensure that the perspectives and needs of the Afro-Asian region are reflected in the Commission's final outcome.

176. For AALCO's Member States, the principle of preserving maritime zones once established under UNCLOS, notwithstanding physical changes to coastlines, carries important implications for the maintenance of legal certainty, sovereign rights and access to marine resources. The clear articulation of this principle within the final report may provide a useful point of reference in ongoing and future discussions.

177. On the question of statehood, the Secretariat observes that the final report's analysis affirms the continuity of Statehood notwithstanding the loss of habitable territory, subject to

recognition by the international community. This finding may be of interest to States contemplating the long-term implications of sea-level rise and considering measures to ensure the preservation of their international legal personality. The Secretariat further notes that innovative governance arrangements, such as the continuation of governmental functions from outside national territory or the use of digital platforms, may warrant exploration as part of national preparedness strategies.

178. With respect to the protection of persons, the Secretariat welcomes the mapping of existing legal regimes and identification of areas where further clarity or supplementary measures could be considered. In this context, regional approaches, such as the African Union's Kampala Convention, may offer instructive experiences. The Secretariat notes that AALCO could serve as a platform for Member States to exchange national and regional practices, and to share views on potential approaches to address the needs of persons displaced by the effects of sea-level rise.

179. The Secretariat invites Member States to consider how the findings and analysis in the final consolidated report may inform their own legal, policy and diplomatic efforts. It stands ready to facilitate dialogue among Member States and to reflect their collective perspectives in relevant international processes. While the conclusion of the ILC's work marks an important milestone, the Secretariat recognises that the evolving nature of the issue will require continued attention and cooperative engagement at multiple levels.

VI. SETTLEMENT OF DISPUTES TO WHICH INTERNATIONAL ORGANIZATIONS ARE PARTIES

A. Background

180. The topic "settlement of international disputes to which international organizations are parties" was included in the long-term programme of work of the Commission, at its sixty-eighth session (2016), on the basis of a syllabus prepared by Sir Michael Wood on the topic which was annexed to the report.[109]

181. At its seventy-third session (2022), it was further decided to include the topic in its programme of work and appoint Mr. August Reinisch as special rapporteur for the topic.[110] The Commission requested the Secretariat to prepare a memorandum providing information on the practice of States and international organizations regarding their international disputes and disputes of a private character, which may be of relevance to its future work on the topic.[111]

182. At its seventy-third session (2022) the Commission also requested States and relevant international organizations to submit information that may be relevant for the topic.[112] Accordingly, the Secretariat communicated a questionnaire prepared by the special rapporteur to the States and concerned international organizations.[113]

183. The General Assembly took note of the Commission's decision to include the topic in its programme of work,[114] and drew the attention of Governments to the importance for the

[109] ILC, 'Report of the International Law Commission on the work of its sixty-eighth session' 226 (2 May-10 June and 4 July-12 August 2016) UN Doc. A/71/10
[110] ILC, 'Report of the International Law Commission on the work of its seventy-third session' 342 (18 April–3 June and 4 July–5 August 2022) UN Doc. A/77/10
[111] ILC, 'Provisions summary record of the 3582nd meeting of the International Law Commission' (16 July 2022) UN Doc. A/CN.4/SR.3582
[112] Ibid
[113] August Reinisch, 'Questionnaire and background to the topic "Settlement of international disputes to which international organizations are parties" <https://legal.un.org/ilc/sessions/74/pdfs/english/io_questionnaire.pdf> accessed 8 September 2023
[114] UNGA Res 77/103 of 7 December 2022

Commission of having their views on the specific issues identified in chapter III of the report of the Commission on the work of its seventy-third session.[115]

184. At its seventy-fourth session (2023) the Commission considered the first report of the special rapporteur, which was of an exploratory character, and proposed 2 Draft Guidelines on the "scope of the Draft Guidelines" and on the "use of terms."[116] During that session Commission considered the report of the Drafting Committee on the topic and provisionally adopted Draft Guidelines 1 and 2 as well as commentaries thereto. It was also decided that the title of the topic be changed from "Settlement of international disputes to which international organizations are parties" to "Settlement of disputes to which international organizations are parties" with a view to better reflecting the scope of the topic that included disputes of private law character to which international organization were parties.[117]

185. At the previous seventy-fifth session, the Commission had before it the second report of the special rapporteur on the renamed topic "Settlement of disputes to which international organizations are parties" ("the Report") that proposed four draft guidelines for consideration.[118] Draft Guideline 3 defined the scope of international disputes, Draft Guideline 4 presented an empirical finding on the modes of dispute settlement, Draft Guideline 5 encouraged the use of adjudicatory modes of dispute settlement and Draft Guideline 6 recognized the well-accepted rule of law prescriptions for dispute settlement. Further the Commission also had before it a memorandum prepared by the Secretariat to guide the Commission in it its work that contained the responses of States and International Organizations to the questionnaire.[119] Subsequently at

[115] UNGA, 'Report of the International Law Commission on the work of its seventy-third session' (18 April- 3 June and 4 July -5 August 2022) UN Doc. A/77/10
[116] ILC, 'Report of the International Law Commission on the work of its seventy-fourth session' (24 April–2 June and 3 July–4 August 2023) (advanced version of 14 August 2023) 36 <https://legal.un.org/ilc/reports/2023/engli sh /a_78_10_advance.pdf> accessed 8 September 2023
[117] ILC, 'Provisions summary record of the 3631st meeting of the International Law Commission' (25 May 2023) UN Doc. A/CN.4/SR.3631
[118] ILC, 'Second report on the settlement of disputes to which international organizations are parties by August Reinisch, Special rapporteur' (1 March 2024) UN Doc. A/CN.4/766
[119] ILC, 'Settlement of disputes to which international organizations are parties: Memorandum by the Secretariat' (10 January 2024) UN Doc. A/CN.5/768

that session the Commission considered the report of the Drafting Committee on the topic[120] and provisionally adopted Draft Guidelines 3 to 6.[121]

186. At the present seventy-sixth session, the Commission had before it the third report of the special rapporteur that focussed on disputes between international organization and private parties and proposed 5 draft guidelines for the consideration of the Commission.[122]

B. Consideration of the topic at the seventy-sixth Session (2025)

The Third Report of the special rapporteur

187. Having already addressed the scope of the topic in the first report and disputes between international organization and states in the second report, the third report of the special rapporteur addressed disputes between international organizations and private parties.[123]

188. In Chapter 1 the special rapporteur explained the scope of the report that identified various disputes that arose between international organizations and private parties that could not strictly be categorized on the basis of the applicable law to the dispute. By way of example, the special rapporteur identified that disputes raising issues of diplomatic protection, human rights, staff regulations, legal personality of international organizations and immunities and privileges could not be classified as either international or domestic disputes as they raised important questions of both international and municipal law.[124]

189. Further in Chapter 2 the special rapporteur provides a detailed description of the various modes of dispute settlement prevalent in the practice of international organizations ranging from

[120] ILC, 'Settlement of disputes to which international organizations are parties: Titles of Part One and Part Two, and texts and titles of Draft Guidelines 3, 4 and 5 as provisionally adopted by the Drafting Committee on 7 and 9 May 2024' (10 May 2024) UN Doc. A/CN.4/L.998
[121] ILC, 'Provisional summary record of the 3673nd meeting' (31 May 2024) UN Doc. A/CN.4/SR.3673
[122] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' (28 April- 30 May 2025) UN Doc. A/80/10 (15 August 2025)
[123] ILC, 'Third report on the settlement of disputes to which international organizations are parties by August Reinisch, Special rapporteur' (30 January 2025) UN Doc. A/CN.4/782
[124] Ibid 10

informal methods such direct negotiation and mediation to more adjudicatory methods such arbitration and judicial settlement.[125]

190. Chapter 3 of the report addresses some policy issues particularly the tension between immunities and privileges of international organizations on the one hand the right to access to justice of private persons on the other hand. The report considers a number of decisions from international courts and tribunals including regional tribunals and human rights courts along with decisions of domestic courts on constitutional issues, that have addressed issues relating jurisdictional immunities of international organizations. The Report recognizes that there exists a need to balance the independence of international organizations with human rights and the rule of law in international affairs.[126]

Text of the draft guidelines proposed in the third report of the special rapporteur

7. Disputes between international organizations and private parties

This Part addresses disputes between international organizations and private parties.

8. Resort to means of dispute settlement

Disputes between international organizations and private parties should be settled in good faith and in a spirit of cooperation by the means of dispute settlement referred to in draft guideline 2, subparagraph c, that may be appropriate to the circumstances and the nature of the dispute.

9. Jurisdictional immunity of international organizations

The jurisdictional immunity of international organizations, serving the purpose of ensuring their independent functioning, should be respected.

[125] Ibid 14
[126] Ibid 83

10. Access to justice

Arbitration, judicial settlement or other reasonable alternative means of dispute settlement shall be made more widely accessible for the settlement of disputes between international organizations and private parties.

11. Dispute settlement and procedural rule of law as well as human rights requirements

The means of adjudicatory dispute settlement made available shall conform to procedural rule of law as well as human rights requirements, including the independence and impartiality of adjudicators and due process.

Consideration of the topic by the Working Group

191. Due to the reduction of the length of the present session, the Commission was unable to consider the third report of the special rapporteur in plenary. However, its 3702nd meeting, on 28 April 2025, the Commission decided to establish a Working Group of the Whole on the topic, to allow for a preliminary exchange of views on the third report.[127] At the same meeting, the Commission decided to appoint Mr. August Reinisch, special rapporteur, as Chair of the Working Group. The Working Group held one meeting, on 20 May 2025 and subsequently at its 3718th meeting, on 23 May 2025, the Commission took note of the oral report of the Chair of the Working Group.[128]

192. At the outset, the Chair recalled the informal consultations held on the topic at the seventy-fifth session and presented a brief introduction to the third report on the topic. He expressed the report would be considered in the plenary at the following session and members were generally expressed appreciation with thoroughness of the third report that focused on disputes between international organizations and private parties. A number of members also expressed regret that the Commission would not be able to conclude its first reading of the topic at the present session.

[127] ILC, 'Provisional summary record of the 3702nd meeting' (28 April 2025) UN Doc. A/CN.4/SR.3702
[128] ILC, 'Provisional summary record of the 3718th meeting' (23 May 2025) UN Doc. A/CN.4/SR.3718

193. Regarding the deliberation in the working group the Chair stated that several members expressed support for distinguishing between disputes involving international organizations based on the parties, rather than the subject matter or the applicable law. Some members encouraged the special rapporteur to still distinguish between the applicable law in the draft guidelines, where appropriate. In this regard the Chair highlighted that disputes between international organizations and private parties represented the most prominent part of the dispute-settlement practice of international organizations. The evolution of the scope of the topic since it was first proposed in the 2016 syllabus towards a more inclusive approach, in order to encompass all types of disputes to which international organizations are parties, was also noted by the Chair.

194. During the deliberations it was also observed that it was possible for a dispute to involve an international organization, a State and private parties. Some members offered further examples of the relevant practice of international organizations or the case law of national courts.

195. When turning to the proposed draft guidelines, the working group addressed a number of issues. In relation to draft guideline 7, members questioned whether the term "private parties" should be defined and observed that the existing title might serve better as the heading of a broader part, rather than as the title of a single provision, so as to maintain consistency with earlier guidelines. On draft guideline 8, the Chair noted that members emphasized the need to take into account the imbalance of power typically present between international organizations and individuals. They felt that terms such as "good faith" and "spirit of cooperation" did not fully capture this reality, although others noted that, given the rising financial difficulties faced by many organizations, there are cases in which an international organization may in fact hold less bargaining power than a wealthy private company.

196. The debate on draft guidelines 9 and 10 focused on jurisdictional immunity and access to justice. The Chair reported that members underlined the need to clarify the relationship between these two concepts, even though immunity had originally been excluded from the scope of the study, since it is difficult to address access to justice without acknowledging immunity limitations. Proposals included merging the two guidelines, deleting explicit references to

arbitration and judicial settlement to emphasize alternative forms of dispute resolution, and reconsidering the use of “shall” versus “should” in formulating obligations. On draft guideline 11, the Working Group highlighted the importance of referencing human rights law in customary and treaty law as well as labour standards and contractual safeguards relevant to private parties.

197. Additional suggestions were also made for expanding the draft guidelines, including considering the exercise of diplomatic protection in disputes with international organizations, differentiating between arbitration on the basis of mutual consent and unilateral arbitration, affirming the right to an effective remedy, and examining compensation in greater depth. members further discussed the value of preparing model clauses. While there was recognition that such provisions could prove useful to States, organizations, and private actors, most members recommended a cautious approach due to the diversity of organizational practice. Some proposed focusing instead on identifying sample provisions or highlighting effective alternatives to litigation and arbitration.

C. Present status and future work

198. As regards the present status and future forward in the topic members of the Working Group expressed their desire for the Commission to make rapid progress on the topic at the seventy-seventh session, ideally concluding the first reading. To that end, they encouraged the special rapporteur to prepare commentaries in advance, an approach he was open to and had already begun considering with the secretariat. The secretariat also circulated a preliminary bibliography and a table of cases, and members were invited to provide additional references to support the preparation of a revised version for the eventual conclusion of the first reading.

D. Observations and comments of the AALCO Secretariat

199. The focus of the third report on disputes between international organizations and private persons as was rightly noted in the working group constitutes the most prominent part of the practice of dispute to which international organizations were parties. A number of cases both

involving arbitration and judicial settlement were analyzed by the special rapporteur along with responses received from States and international organizations.

200. Based on the current State practice the special rapporteur has suggested guidelines that balance the requirement of individual human rights including access to justice and the crucial requirement of independent functioning of international organizations. Much of the available practice concerns immunities of international organizations, in which the need for making dispute settlement means more available has been acknowledged by the special rapporteur.

201. The AALCO Secretariat invites the Member States to express their views on the topic including the general direction and shape being development in the Commission. While expressing their views Member States are requested to take into account the third report of the special rapporteur and the draft guideline suggested therein along with the observations in the deliberations in the working group. The comprehensive bibliography and table cases has also been made available by the special rapporteur, which are also open for contributions.

VII. PREVENTION AND REPRESSION OF PIRACY AND ARMED ROBBERY AT SEA

A. Background

202. At its seventy-first session in 2019, the International Law Commission (ILC) added the topic "Prevention and Repression of Piracy and Armed Robbery at Sea" to its long-term programme of work, accompanied by a syllabus outlining possible structure and approach.[129] At the seventy-third session in 2022, the Commission formally included the topic in its programme of work.[130] The scope was defined to include piracy as set out in the United Nations Convention on the Law of the Sea (UNCLOS),[131] as well as armed robbery against ships as defined in the practice of the International Maritime Organization (IMO).[132] The Secretariat was tasked with gathering information from States and relevant international organisations.[133]

203. In 2023, the first report reviewed legislative and judicial practice across regions, concluding that the lack of uniformity and consistency in national approaches presented difficulties for codification.[134] The second report in 2024 examined international and regional cooperation in combating piracy and armed robbery, reviewing bilateral, multilateral and regional mechanisms, and presenting draft articles 4 to 7 for the Commission's consideration.[135] Over these two years, the Commission provisionally adopted draft articles 1 to 7, covering definitions, scope, general obligations, measures for prevention and repression, criminalisation

[129] International Law Commission, 'Report on the Work of Its seventy-first session' (2019) UN Doc A/74/10, paras 345-350.
[130] International Law Commission, 'Report on the Work of Its seventy-third session' (2022) UN Doc A/77/10, paras 50-55.
[131] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS) art 101.
[132] International Maritime Organization, 'Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships' (Resolution MSC.167(78), 2004).
[133] ILC, 'Report on the Work of Its seventy-first session' para 351.
[134] First Report on the Prevention and Repression of Piracy and Armed Robbery at Sea (2023) UN Doc A/CN.4/765, paras 10-45.
[135] Second Report on International and Regional Cooperation (2024) UN Doc A/CN.4/775, paras 20-60.

under national law, and jurisdiction.[136] These articles reflected a combined approach drawing from treaty law, customary international law, and State practice.[137]

B. Note by the special rapporteur

204. At its seventy-sixth session in 2025, the newly appointed special rapporteur, Mr. Louis Savadogo, presented a note[138] setting out his approach to continuing the ILC's work on the topic.[139] This note was both a transition from the work of his predecessor and a roadmap for future deliberations. It identified major themes for the Commission's consideration, including

- the definition and scope of piracy and armed robbery and the legal distinction between them,
- jurisdictional issues such as universal jurisdiction,[140]
- the obligation to extradite or prosecute (*aut dedere aut judicare*),[141]
- the differentiation between prescriptive, enforcement and adjudicatory jurisdiction,[142]
- the relationship of the topic to the UNCLOS framework,
- with emphasis on preserving the freedoms of the high seas[143] and the balance of rights between flag States and coastal States,
- humanitarian obligations relating to the rescue, protection and repatriation of victims,[144]
- the legal implications of emerging threats such as autonomous ships, drones and cyberattacks targeting vessels,[145]
- the regulation and carriage of private armed security on merchant ships,[146] and
- the question of wrongful seizure of ships under Article 106 of UNCLOS.[147]

[136] International Law Commission, Report on the Work of Its seventy-fourth and seventy-fifth Sessions' (2023-2024) UN Docs A/78/10 and A/79/10, annexes.
[137] ibid paras 100-115.
[138] A/CN.4/786
[139] Louis Savadogo (special rapporteur), 'Note on Future Work' (2025) UN Doc A/CN.4/786, paras 1-25.
[140] UNCLOS art 105.
[141] First Report (n 6) para 78.
[142] Louis Savadogo, 'Note on Future Work' (n 11) paras 15-18.
[143] UNCLOS arts 87, 89.
[144] 'Note on Future Work' (n 11).
[145] Louis Savadogo, 'Note on Future Work' (n 11) paras 40-45.
[146] ibid paras 46–50.
[147] UNCLOS art 106.

205. The special rapporteur outlined a methodological approach that would build on Mr. Cissé's (the former special rapporteur for the topic) prior work and integrate the two existing reports and provisionally adopted draft articles.[148] This would involve drawing on State practice and regional or sub-regional cooperation frameworks such as the Djibouti Code of Conduct, ReCAAP and the Yaoundé Code of Conduct,[149] as well as engaging with international and regional case law, particularly from human rights courts.[150] Academic commentary[151] and institutional resolutions, notably the 2023 Institute of International Law resolution on piracy,[152] would also be incorporated. He proposed that the work proceed through a combination of thematic analysis and article-by-article development, with general or structural questions addressed before narrower operational issues. His proposed future schedule envisioned an immediate review of the draft articles already adopted, particularly draft articles 6 and 7, in light of plenary debate and additional research, followed by sequenced thematic studies and possible consolidation of work initially planned for later reports.[153]

C. Consideration of the topic at the seventy-sixth session (2025)

206. To facilitate detailed discussion, the Commission established a Working Group of the Whole on 28 April 2025, chaired by the special rapporteur, which met once on 22 May 2025 due to the shortened session.[154] Members expressed strong support for integrating the work of the previous special rapporteur and revisiting earlier draft articles in light of new developments. There was broad consensus that UNCLOS should remain the principal legal framework, with due regard to high seas freedoms, universal jurisdiction over piracy, and the rights of flag and coastal States.[155]

[148] ILC, 'Report on the Work of Its seventy-sixth session' (2025) UN Doc A/80/10.
[149] Djibouti Code of Conduct against Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (2009), Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) (2006) and Yaoundé Code of Conduct on Maritime Safety and Security in the Gulf of Guinea (2013).
[150] ILC, 'Report on the Work of Its seventy-sixth session' para 414-415.
[151] See eg David Attard, The International Law of the Sea (2nd edn, Oxford University Press 2014) 434–460.
[152] Institute of International Law, 'Resolution on the Suppression of Piracy' (2023) Session of Angers.
[153] Louis Savadogo, 'Note on Future Work' para 70.
[154] ILC, 'Report on the Work of Its seventy-sixth session' para 407.
[155] UNCLOS and ILC, Note on Future Work' paras 130-135.

207. The Working Group agreed on the importance of addressing issues such as the carriage of armed guards on merchant vessels, wrongful seizure of ships under Article 106 of UNCLOS, technological threats including autonomous vessels, uncrewed aerial vehicles and cyberattacks,[156] and clarifying the operative terms "prevention" and "repression". Jurisdictional questions such as the *jus cogens* status of piracy,[157] the scope of the *aut dedere aut judicare* obligation,[158] and the application of different forms of jurisdiction to armed robbery were also identified as priority matters. Several members stressed the need to address humanitarian concerns, including obligations to rescue and assist victims, in line with existing maritime safety and human rights norms.[159] It was also recognised that regional and subregional frameworks and jurisprudence offer valuable insights for effective prevention and repression measures.[160]

208. The Working Group also discussed the possible form of the Commission's final output, with views divided between continuing to elaborate draft articles with a view to a binding instrument and developing draft conclusions or guidelines as a non-binding framework.[161] In his oral report on 26 May 2025, the Chair concluded that these discussions would guide the preparation of the special rapporteur's next substantive report, which would integrate thematic analysis, refined draft provisions and a clearer proposal for the final form of the Commission's work.[162]

D. Draft articles

209. Over the course of its consideration of the topic since 2023, the Commission has provisionally adopted seven draft articles.[163] Draft articles 1 to 3 set out definitions and scope, general obligations, and the application of international law.[164] Draft article 4 provides for general obligations of prevention and repression, including cooperation, recognition of piracy as

[156] ibid paras 140–145; UNCLOS (n 3) art 106 and Louis Savadogo, 'Note on Future Work' (n 10) paras 40-45.
[157] ILC, 'Report on the Work of Its seventy-sixth session' para 413.
[158] UNCLOS art 105; ILC, ibid.
[159] IMO, 'International Convention for the Safety of Life at Sea' (SOLAS) (1974).
[160] ILC, 'Report on the Work of Its seventy-sixth session' paras 412-415.
[161] Note on Future Work paras 180-185.
[162] ibid para 408.
[163] ILC, 'Report on the Work of Its Seventy-Fourth and Seventy-Fifth Sessions'.
[164] ibid annex.

a crime under international law, and non-justifiability.[165] Draft article 5 addresses the obligation of prevention through legislative, administrative and judicial measures and cooperation with other States and relevant organisations.[166] Draft article 6 concerns criminalisation under national law, inchoate and accessory offences, responsibility of superiors, and the non-applicability of statutory limitations.[167] Draft article 7 deals with the establishment of national jurisdiction, including territorial, nationality and passive personality principles, and the *aut dedere aut judicare obligation*.[168]

E. Summary of discussions on the draft articles

210. Debates on the draft articles have reflected broad agreement on the need for a comprehensive legal framework that integrates treaty law, customary international law, and evolving State practice.[169] However, members have differed on certain jurisdictional questions, the extent of obligations to prevent and repress piracy and armed robbery, and the scope of humanitarian duties.[170] Emerging issues, particularly the use of new technologies and the role of private armed security,[171] have been flagged for further development. The special rapporteur has proposed revisiting the language of draft articles 6 and 7 to reflect recent discussions, including clarifying jurisdictional bases and incorporating references to technological and humanitarian considerations.[172]

F. Present status and future work on the topic

211. The topic remains under active consideration by the Commission, with the next stage involving a review and possible revision of the draft articles already provisionally adopted, and further work on criminal law aspects, technological developments, humanitarian assistance,

[165] ibid annex, draft article 4.
[166] ibid annex, draft article 5.
[167] ibid annex, draft article 6.
[168] ibid annex, draft article 7.
[169] ILC, 'Report on the Work of Its seventy-sixth session' (n 20) paras 414-415.
[170] ibid.
[171] Note on Future Work, para 40.
[172] Note on future Work, paras 230-235, 240-245.

universal jurisdiction, and mechanisms for international cooperation.[173] The question of whether the final output should take the form of draft articles or non-binding conclusions or guidelines remains open.[174]

G. Observations and comments of the AALCO Secretariat

212. The AALCO Secretariat notes that Member States have consistently welcomed the inclusion of this topic in the ILC's programme of work. The Afro-Asian region continues to face significant challenges from piracy and armed robbery at sea, particularly in the Gulf of Guinea, the Horn of Africa, and Southeast Asia. In view of the evolving focus under the new special rapporteur, AALCO Member States are encouraged to provide updated information on their national practice, to clarify their positions on jurisdiction, mutual legal assistance and cooperation, and to share their views on emerging issues such as technological threats, private armed security on vessels, and humanitarian obligations. The Secretariat congratulates those Member States that have already submitted information and urges others to participate actively in the forthcoming stages of the Commission's work.

[173] ibid paras 250-255.
[174] ibid paras 260.

VIII. SUBSIDIARY MEANS FOR THE DETERMINATION OF RULES OF INTERNATIONAL LAW

A. Background

213. The Commission, at its seventy-third session (2022), decided to include the topic "Subsidiary means for the determination of rules of international law" in its programme of work and appointed Mr. Charles Chernor Jalloh as special rapporteur. Also at its seventy-third session, the Commission requested the Secretariat to prepare a memorandum identifying elements in the previous work of the Commission that could be particularly relevant for its future work on the topic, to be submitted for the seventy-fourth session (2023); and a memorandum surveying the case law of international courts and tribunals, and other bodies, which would be particularly relevant for its future work on the topic, to be submitted for the seventy-fifth session (2024).

214. The General Assembly, in paragraph 26 of its resolution 77/103 of 7 December 2022, subsequently took note of the decision of the Commission to include the topic in its programme of work.

215. At its seventy-fourth session (2023), the Commission considered the first report of the special rapporteur[175], which addressed the scope of the topic and the main issues to be addressed in the course of the work of the Commission. The report also considered the previous work of the Commission on the topic; the nature and function of sources of international law and their relationship to the subsidiary means; and the drafting history of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice and its status under customary international law. The Commission also had before it the memorandum[176] it had requested from the Secretariat identifying elements in the previous work of the Commission that could be particularly relevant to the topic.

[175] ILC, 'First report on subsidiary means for the determination of rules of international law Charles Chernor Jalloh, Special Rapporteur' (13 February 2023) UN Doc. A/CN.4/760.
[176] UNGA, 'Memorandum by the Secretariat- Elements in the previous work of the International Law Commission that could be particularly relevant to the topic' (8 February 2023) UN Doc. A/CN.4/759.

216. Following the debate in plenary, the Commission decided to refer draft conclusions 1 to 5, as presented in the special rapporteur's first report, to the Drafting Committee. The Commission provisionally adopted draft conclusions 1, 2 and 3, together with commentaries, and took note of the report of the Drafting Committee on draft conclusions 4 and 5.

217. At its seventy-fifth session (2024), the Commission considered the second report of the special rapporteur[177], which addressed: the work of the Commission on the topic thus far; the functions of subsidiary means for the determination of rules of international law, including in the drafting history of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice, the practice of the Court and other international tribunals and scholarly writings concerning the functions of subsidiary means; and the general nature of precedent in domestic and international adjudication, including Article 38, paragraph 1 (d), and its relationship to Article 59 of the Statute of the International Court of Justice, as well as the relationship between Article 59 and Article 61 of the Statute. The Commission also had before it the memorandum[178] it had requested from the Secretariat identifying elements in "the case law of international courts and tribunals, and other bodies, which would be particularly relevant for its future work on the topic". The Commission subsequently decided to refer draft conclusions 6, 7 and 8, as contained in the second report, to the Drafting Committee, taking into account the views expressed in the plenary debate. The Commission provisionally adopted draft conclusions 4 to 8 with commentaries.

218. At the present seventy-sixth session, the Commission had before it the third report of the special rapporteur ("the Report") that proposed 5 Draft Guidelines for consideration[179] and the preliminary bibliography.[180]

[177] ILC, 'Second report on subsidiary means for the determination of rules of international law Charles Chernor Jalloh, special rapporteur' (30 January 2024) UN Doc. A/CN.4/770.
[178] UNGA, 'Memorandum by the Secretariat' (17 January 2024) UN Doc. A/CN.4/765.
[179] ILC, 'Third report on subsidiary means for the determination of rules of international law Charles Chernor Jalloh, special rapporteur' (29 January 2025) UN Doc. A/CN.4/781.
[180] ILC, 'Preliminary selected bibliography on subsidiary means for the determination of rules of international law prepared by the special rapporteur (24 March 2025) UN Doc. A/CN.4/781/Add.1.

B. Third report of the special rapporteur

219. The third report of the special rapporteur analyzed teachings and other subsidiary means for the determination of rules of international law. The special rapporteur narrowed down the focus of the report to only two aspects namely, the work of public and private expert bodies and the resolutions or decisions of certain international organizations. The report also addressed various miscellaneous issues that had been raised during the previous debates in the Commission or by States in their comments, in particular, the topics of unity and coherence of international law (often referred to as fragmentation) and the relationship between subsidiary means and the supplementary means of interpretation in the context of treaty law. Consistent with the programme of work for the topic, the report sought to complete the set of draft conclusions proposed by the special rapporteur. The aim was that the report would serve as the basis for the Commission's completion of the first reading on this topic in 2025.

220. Besides the introductory chapter, the report comprised of eight chapters. In chapter II, the special rapporteur discussed the previous work to date on the topic. He summarized the generally positive debate on the various issues addressed in the second report both in the Commission during its seventy-fifth session and in the Sixth Committee at its seventy-ninth session, both in 2024.

221. In chapter III, the special rapporteur examined teachings as a category of subsidiary means rooted in Article 38, paragraph 1 (d), of the Statute of the International Court of Justice. The content of the category was reviewed based on practice. Thereafter, he examined the remaining issue of the weight to attach to teachings when determining rules of international law. He suggested that the Commission consider adding a new subparagraph addressing the weight to be attributed to teachings in draft conclusion 5. The concluding part of the chapter proposed a draft conclusion on the outputs of private expert bodies. Draft conclusion 9 as proposed in the Report read as follows:

Draft conclusion 9

“Outputs of private expert groups

1. Outputs authored by individuals or collectives of individuals, organized independently of State or international organization involvement, may serve as a subsidiary means for the determination of the existence and content of rules of international law.

2. When assessing the weight to be given to such outputs, regard should be had to, as appropriate, the criteria set out in draft conclusion 3.”

222. In chapter IV, the special rapporteur studied the works of selected expert bodies created or empowered by States to carry out a particular mandate. He addressed the most common types of outputs produced by those bodies to determine how they had been used in practice as subsidiary means for the determination of rules of international law. The chapter concluded with a proposed draft conclusion on the pronouncements of public expert bodies. Draft conclusion 10 as proposed in the Report read as follows:

Draft conclusion 10

“Pronouncements of public expert bodies

1. A pronouncement of an expert body may serve as a subsidiary means for the determination of the existence and content of rules of international law.

2. When assessing the weight of a pronouncement under paragraph 1, regard should be had to, as appropriate, the criteria set out in draft conclusion 3.

3. The use of pronouncements of expert bodies as subsidiary means for the determination of rules of international law under paragraphs 1 and 2 is without prejudice to their use for other purposes.”

223. In chapter V, taking into account the prior work of the Commission in several of its recent topics, the report examined resolutions of international organizations or intergovernmental conferences as subsidiary means for the determination of rules of international law. The chapter culminated with the proposal of a draft conclusion that addressed the use of resolutions as subsidiary means as well as their weight, in line with the general criteria previously adopted during the seventy-fourth session of the Commission, in

2023. Draft conclusion 11 as proposed in the Report read as follows:

“Draft conclusion 11

Resolutions of international organizations and intergovernmental conferences

1. A resolution adopted by an international organization or at an intergovernmental conference may serve as a subsidiary means for the determination of the existence and content of rules of international law.

2. When assessing the weight of resolutions of international organizations or intergovernmental conferences, regard should be had to, as appropriate, the criteria set out in draft conclusion 3.

3. The use of resolutions as subsidiary means for the determination of rules of international law under paragraphs 1 and 2 is without prejudice to their use for other purposes.”

224. Chapter VI concerned the risk of fragmentation or the coherence and unity of international law: an issue that had been mentioned in the first report. Draft conclusion 12 as proposed in the Report read as follows:

Draft conclusion 12

“Coherence in decisions of courts and tribunals

1. Courts or tribunals charged with interpreting and applying international law should promote, as far as possible and within the limits of their mandate, the consistency, stability and predictability of the international legal system.

2. In accordance with paragraph 1, when determining the rules of international law to apply in a given case, and there appears to be a conflict between the legal interpretations contained in decisions of different courts or tribunals on essentially the same issue, regard shall be had to the interest of achieving the necessary clarity and the essential consistency of international law.”

225. In chapter VII, the special rapporteur considered the question of the relationship between the subsidiary means found in Article 38, paragraph 1 (d), of the Statute of the International Court of Justice and the supplementary means of interpretation in article 32 of

the Vienna Convention on the Law of Treaties (1969 Vienna Convention). He proposed draft conclusions on the relationship between subsidiary means and the supplementary means of interpretation. Draft conclusions 13 as proposed in the Report read as follows:

Draft conclusion 13

"Relationship between subsidiary means and supplementary means of interpretation

1. Subsidiary means can play a significant role in the interpretation of a treaty. The interpretative function of subsidiary means is distinct from, but complementary to, their role in determining the existence and content of rules of international law.

2. Subsidiary means, especially decisions of courts and tribunals, may serve as supplementary means of interpretation under article 32 of the Vienna Convention on the Law of Treaties, or inform the application of the general rule under article 31, including by clarifying the ordinary meaning to be given to its terms in their context and in the light of its object and purpose."

226. The report sought to provide an opportunity to step back and reassess the entire set of draft conclusions provisionally adopted by the Commission, together with the comments of States received on them so far, with a view to enhancing their overall coherence. For this reason, taking into full account the main suggestions of members of the Commission and delegations to the Sixth Committee, the special rapporteur proposed a structured scheme to the draft which formed chapter VIII.

227. In chapter IX, the special rapporteur addressed the future programme of work for the topic. It was anticipated that a first reading on this topic would be completed in 2025 and, taking into account the one-year time frame usually given to Governments and observers to make their written observations on Commission topics, a second reading in 2027.

C. Consideration of the topic at the seventy-sixth session (2025)

228. At its seventy-sixth session (2025), the Commission considered the third report of the special rapporteur on the topic. The special rapporteur, in his third report, had studied the

work of private and public expert bodies, and the possible consideration of resolutions of international organizations and of intergovernmental conferences as subsidiary means. The report, consistent with the work plan for the topic, also addressed the question of the risk of conflicting decisions of international courts and tribunals and the possible link between the supplementary means of interpretation under the law of treaties and the subsidiary means of determining rules of international law, the study of which the Commission had indicated it would undertake. The report also reflected on the views of States on draft conclusions 1 to 8, with commentaries, and proposed five draft conclusions on, respectively, the work of private and public expert bodies, the issues of their weight, resolutions of international organizations, the coherence of international law and the possible relationship between subsidiary means for the determination of rules of international law and supplementary means of interpretation of treaties.

229. At its 3712th to 3717th meetings, from 12 to 19 May 2025, the Commission considered the third report of the special rapporteur. During the plenary debate, members thanked the special rapporteur for his rich third report and the analysis and proposals contained in it. They welcomed the interest shown by States in the topic and reiterated that subsidiary means, as referred to in Article 38, paragraph 1 (d), of the Statute of the International Court of Justice, were not sources of international law and stressed the importance of not confusing the two.

230. With regard to draft conclusion 3, several members considered that it set out useful general criteria for assessing the weight of subsidiary means. The view was expressed that the authority of teachings was not necessarily accepted from the outset but often emerged over time through a process of scrutiny and contestation. Regarding draft conclusion 4, concern was expressed that the current formulation stating that judicial decisions and teachings "are" subsidiary means could obscure the fact that such materials might also serve other functions under international law. It was suggested that the provision could be revisited at the second reading to enhance conceptual clarity. It was also proposed that it be clarified whether the scope of "decisions of courts and tribunals" included outputs of quasi-judicial entities, such as human rights treaty bodies.

231. Regarding draft conclusion 5, support was expressed for adopting an inclusive understanding of teachings that embraced non-traditional forms of scholarship, including digital formats such as blogs, websites and podcasts. Concerning draft conclusion 6, support was expressed for the special rapporteur's proposal to reposition draft conclusion 6 earlier in the text, following draft conclusion 2. It was observed that a clearer terminological distinction should be drawn between "determination" and "interpretation", as their interchangeable use might cause ambiguity.

232. With regard to draft conclusion 8, some members suggested that it be clarified that it served as a complement to the general framework set out in draft conclusion 3. With regard to draft conclusion 9, members agreed with the special rapporteur that outputs of private expert bodies, when reflecting the independent and collective views of qualified publicists from diverse backgrounds, might serve as subsidiary means for the determination of rules of international law.

233. Members supported the special rapporteur's proposed structure of the draft conclusions, particularly organizing them into parts and the repositioning of draft conclusion 6, on the "Nature and function of subsidiary means", to an earlier part of the structured text. With respect to the format, the view was expressed that presenting the project as draft conclusions was appropriate, as confirmed by broad State support and consistent with the practice of the Commission on topics relating to Article 38 of the Statute of the International Court of Justice.

234. The special rapporteur thanked the many members of the Commission who had participated in the rich debate on his third report. He observed that he had taken into careful account all members' views, and in relation to drafting proposals, would take those into account for revisions to draft conclusions that he would present to the Drafting Committee. He noted the general agreement in the Commission on structuring the draft conclusions into five parts, including his recommendation to move draft conclusion 6 earlier, so as to follow draft conclusion 2.

235. At its 3717th meeting, on 19 May 2025, the Commission decided to refer draft conclusions 9, 10, 11, 12 and 13, as contained in the third report, to the Drafting Committee, taking into account the comments and observations made during the plenary debate. At the same meeting, the Commission further referred to the Drafting Committee all the draft conclusions adopted at previous sessions for the purpose of finalizing the first reading.

236. At its 3727th meeting, on 30 May 2025, the Second Vice-Chair of the Commission, on behalf of the Chair of the Drafting Committee, introduced the report of the Drafting Committee on the topic[181]. At the same meeting, the Commission took note of the report of the Drafting Committee containing draft conclusions 1 to 13, provisionally adopted by the Committee on first reading at the present session. The adoption of draft conclusions 1 to 13 by the Commission was postponed to the seventy-seventh session, owing to the unavailability of time for the translation and consideration of the commentaries that had been prepared by the special rapporteur, as a consequence of the reduced length of the present session.

Texts and titles of the draft conclusions provisionally adopted by the Drafting Committee on first reading are as follows:

Part One
Introduction

Draft Conclusion 1
Scope
The present draft conclusions concern the use of subsidiary means for the determination of rules of international law.

[181] ILC, 'Texts and titles of the draft conclusions provisionally adopted by the Drafting Committee on first reading' (26 May 2025) UN Doc. A/CN.4/L.1019.

Part Two

General provisions

Draft Conclusion 2

Categories of subsidiary means for the determination of rules of international law

Subsidiary means for the determination of rules of international law include:

(a) decisions of courts and tribunals;

(b) teachings;

(c) any other means generally used to assist in determining rules of international law.

Draft conclusion 3 [6]

Nature and function of subsidiary means

1. Subsidiary means are not a source of international law. The function of subsidiary means is to assist with the determination of the existence and content of rules of international law.

2. The use of materials as subsidiary means for the determination of rules of international law is without prejudice to their use for other purposes.

Draft conclusion 4 [3]

General criteria for the assessment of subsidiary means for the determination of rules of international law

When assessing the weight of subsidiary means for the determination of rules of international law, regard should be had to, *inter alia*:

(a) their degree of representativeness;

(b) the quality of the reasoning;

(c) the expertise of those involved;

(d) the level of agreement among those involved;

(e) the reception by States and other entities;

(f) where applicable, the mandate conferred on the body.

Part Three
Decisions of Courts and Tribunals

Draft conclusion 5 [4]
Decisions of courts and tribunals

1. Decisions of international courts and tribunals, in particular of the International Court of Justice, are a subsidiary means for the determination of the existence and content of rules of international law.

2. Decisions of national courts may be used, in certain circumstances, as a subsidiary means for the determination of the existence and content of rules of international law.

Draft conclusion 6 [7]
Absence of legally binding precedent in international law

Decisions of international courts or tribunals may be followed on points of law where those decisions address the same or similar issues as those under consideration. Such decisions do not constitute legally binding precedent unless otherwise provided for in a specific instrument or rule of international law.

Draft conclusion 7 [8]
Weight of decisions of courts and tribunals

When assessing the weight of decisions of courts or tribunals, regard should be had to, in addition to the criteria set out in draft conclusion 4, *inter alia*:

(a) whether the court or tribunal has been conferred with a specific competence with regard to the application of the rule in question;

(b) the extent to which the decision is part of a body of concurring decisions; and

(c) the extent to which the reasoning remains relevant, taking into account subsequent developments.

Part Four

Teachings

Draft conclusion 8 [5]

Teachings

Teachings, especially those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world, are a subsidiary means for the determination of the existence and content of rules of international law. In assessing the representativeness of teachings, due regard should also be had to, *inter alia*, gender and linguistic diversity.

Draft conclusion 9

Weight of teachings

When assessing the weight of teachings, regard should be had to, as appropriate, the criteria set out in draft conclusion 4.

Part Five

Other means generally used to assist in determining rules of international law

Draft conclusion 10 [9 and 10]

Expert bodies

The works of bodies consisting of experts serving in their personal capacity may serve as a subsidiary means for the determination of the existence and content of rules of international law.

Draft conclusion 11 [9 and 10]

Weight of the works of expert bodies

When assessing the weight of the works of expert bodies, regard should be had to, in addition to the criteria set out in draft conclusion 4:

(a) the character and normative value of the works produced by the expert body concerned;

(b) the methodology used in producing its works on a particular issue;

(c) the extent to which the works remain relevant, taking into account subsequent developments;
(d) the extent to which the body is comprised of experts with competence in international law; and
(e) the process and basis of selection of the experts.

Draft conclusion 12 [11]

Resolutions and other texts produced by international organisations or at intergovernmental conferences

Resolutions and other texts produced by international organisations or at intergovernmental conferences may be used as subsidiary means for the determination of the existence and content of rules of international law.

Draft conclusion 13 [11]

Weight of resolutions and other texts produced by international organisations or at intergovernmental conferences

When assessing the weight of resolutions and other texts produced by international organisations or at intergovernmental conferences, regard should be had to, as appropriate, in addition to the criteria set out in draft conclusion 4, the circumstances surrounding their production.

D. Present status and future work

237. The special rapporteur had indicated in the introduction to the report that he had sought to complete the draft conclusions on the topic during the seventy-sixth session in 2025. The adoption of draft conclusions 1 to 13 by the Commission was postponed to the seventy-seventh session, owing to the unavailability of time for the translation and consideration of commentaries, which had been prepared by the special rapporteur, as a consequence of the reduced length of the session. As regards the future programme of work, which had been adhered to up to the present session, the special rapporteur regretted the impossibility of completing a first reading at the seventy-sixth session and called for such

opportunity at the next session. The special rapporteur would look forward for the adoption of the draft conclusions as well as the draft commentaries to those conclusions in the next session.

E. Observations and comments of the AALCO Secretariat

238. The AALCO Secretariat welcomes the comprehensive work undertaken by the Commission at its seventy-sixth session (2025) on the topic "Subsidiary means for the determination of rules of international law." The Secretariat notes with appreciation the efforts of special rapporteur Mr. Charles Chernor Jalloh in presenting his third report, which successfully completed the set of draft conclusions on this important topic, bringing the Commission closer to finalizing its first reading.

239. The Commission's consideration of draft conclusions 9 through 13, alongside the restructuring of the entire set of provisions into five coherent parts, represents a significant achievement in systematically addressing the various categories of subsidiary means. The decision to reposition draft conclusion 6 on the "Nature and function of subsidiary means" to an earlier part of the structured text enhances the logical flow and accessibility of the provisions.

240. Regarding the new draft conclusions on expert bodies (draft conclusions 10 and 11), Commission's recognition that works of bodies consisting of experts serving in their personal capacity may serve as subsidiary means is appreciable. The detailed criteria provided for assessing the weight of such works, including the methodology used, the expertise of the body's composition, and the process of expert selection, will provide valuable guidance to practitioners and courts.

241. The Commission's work on resolutions and other texts produced by international organizations or at intergovernmental conferences (draft conclusions 12 and 13) is highly significant. Given that many AALCO Member States are active participants in various international organizations and intergovernmental processes, these provisions will have

particular practical significance for the region.

242. While it is regrettable that the adoption of draft conclusions 1 to 13 by the Commission was postponed to the seventy-seventh session, the AALCO Secretariat encourages its Member States to continue their engagement with this topic as it moves toward completion of the first reading at the seventy-seventh session (2026). Member States are urged to share their national practice regarding the use of subsidiary means in the determination of rules of international law, particularly examples from Asian and African legal systems that may not be well-represented in international jurisprudence. Such contributions would enrich the Commission's understanding and ensure that the final conclusions reflect the global diversity of legal systems and practices.

IX. NON-LEGALLY BINDING INTERNATIONAL AGREEMENTS

A. Background

243. At its seventy-fourth session in 2023, the Commission decided to include the topic "Non-legally binding international agreements" in its programme of work and appointed Mr. Mathias Forteau as special rapporteur. Subsequently, the General Assembly, in paragraph 7 of its resolution 78/108 of 7 December 2023, took note of the Commission's decision to include the topic in its programme of work.

244. The inclusion of this topic in the Commission's agenda reflects its practical importance in contemporary international relations. In recent decades, there has been a proliferation of non-legally binding international agreements as States and international organizations increasingly rely on more flexible and informal instruments of cooperation compared to treaties. While such agreements are not legally binding, they often contain normative commitments that shape the behaviour of the parties involved. The growing use of non-legally binding agreements has given rise to various legal questions regarding their nature, effects, and relationship with other sources of international law.

245. By taking up this topic, the Commission aims to provide legal clarification on these issues based on an in-depth analysis of State practice, jurisprudence, and teachings. The goal is to offer practical guidance to States and international organizations without prejudice to their choice to utilize non-legally binding agreements.

246. At its seventy-fifth session the special rapporteur, Mr. Mathias Forteau, presented his first report on the topic that aimed to frame the general direction, scope, questions to be examined, and form of the final outcome, without proposing draft provisions at that stage. During the deliberations at the Commission members generally welcomed the special rapporteur's first report and its focus on discussing general issues without proposing draft provisions at this preliminary stage. The discussions focused on matters relating to terminology and scope among

other issues and broad support was expressed for special rapporteur's call to focus the Commission's work on the practical aspects rather than purely theoretical considerations.[182]

247. At the present seventy-sixth session (2025)[183] the Commission had before it the second report of the special rapporteur,[184] along with an annex containing 6 proposed draft conclusions.

B. Consideration of the topic at the seventy-sixth session (2025)

The Second Report of the special rapporteur

248. The second report of the special rapporteur on the topic focusses on the key substantive issues identified in the first report i.e. the distinction between treaties and non-legally binding international agreements. The report also reflects on the discussions on the first report in the Commission as well as in UN General Assembly Sixth Committee (Legal) and expresses his views on the form of the outcome, its purpose the terminology and the scope of the project.

249. Regarding the form of the outcome based on the views expressed by States the special rapporteur expressed his preference to continue to work towards an outcome in the form of draft conclusions that offer clarity with being prescriptive.

250. The report starts by underscoring the importance of the topic due to the increasing use of non-legally binding international agreements in international cooperation. It reaffirms the Commission's intention not to adopt prescriptive rules but rather to provide legal clarification and practical guidance to States, preserving the flexibility and utility of informal agreements while reducing legal uncertainties surrounding them.

[182] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' (28 April- 30 May 2025) UN Doc. A/80/10 (15 August 2025)
[183] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' (28 April- 30 May 2025) UN Doc. A/80/10 (15 August 2025)
[184] ILC, 'Second report on non-legally binding international agreement, by Mathias Forteau, special rapporteur' UN Doc. A/CN.4/784 (18 Febraury 2025)

251. The Report noted that States' views vary on terminology, however the special rapporteur expressed a preference to retain the term "agreement" to refer generally to any mutual commitment made at the international level that does not create rights or obligations or have binding legal effect. According to the special rapporteur this choice reflects practice, doctrine, and jurisprudence which recognize that agreements may be legally binding or not, depending on their terms and context. However, in this regard the draft conclusions make clear that their use of the term "agreement" is without prejudice to different meanings the term may have under internal law or specific international instruments.

252. Regarding the scope, the report defines the focus as written bilateral and multilateral agreements between States, between States and international organizations, or between international organizations. Agreements entered into by sub-State authorities are included only if adopted at the international level. Excluded is any discussion of treaties not yet in force, model treaties, or unilateral acts attributable to States or international organizations.

253. As discussed earlier the substantive issue addressed in the report is the distinction between treaties and non-legally binding agreements. The report identifies that the determination must be made on a case-by-case basis and primarily depends on the intention of the parties to be legally bound. Such intention may be expressly stated or, where absent, inferred from relevant elements which must be assessed holistically. The report prefers to abstain from explicitly labelling these factors as "subjective" or "objective" to avoid confusion and instead refers to them as indicators that collectively help establish intent.

254. Where agreements contain an express indication such as a clause stating whether the agreement is legally binding or not the report notes that it is generally sufficient to determine their status. This practice is reflected in decisions of Courts and tribunals who tend to respect such explicit statements by all parties, although contrary practice exists where ambiguous or contradictory language in the text may complicate this determination. It was also noted States also commonly used such express clauses in practice to clarify an instrument's legal nature.

255. In the case of implied indications, the report highlights various indicators from jurisprudence, practice, and doctrine that assist in discerning parties' intention. These include the actual terms and wording of the agreement, the context and circumstances surrounding its negotiation and adoption, the form and title of the agreement (though these are not decisive), the nature and authority of the negotiating parties, procedural aspects such as the process of adoption or ratification, registration or publication of the agreement (e.g., with the United Nations under Article 102 of the Charter), domestic legal procedures, and subsequent practice or conduct of the parties regarding the agreement. No single indicator is decisively determinative; rather, the indicators must be considered together in their specific factual and legal context.

256. The report extensively reviews relevant case law from the ICJ, ITLOS, arbitral tribunals, national courts, and international organizations, demonstrating evolving jurisprudence moving from formalistic or objectivist approaches to a more nuanced, holistic approach cantered on intention, expressed or inferred.

257. The report notes that State practice and national guidelines similarly reveal a hybrid approach. It notes that States commonly emphasized the importance of intention as reflected in the text, terminology, structure, and context of their agreements, as well as the use of specific clauses such as dispute settlement and entry-into-force provisions. Guidance documents from various States cited in the report show efforts to manage terminology carefully, recommending or discouraging certain terms and formulations to signal the intended binding or non-binding nature.

258. The report proposes draft conclusions covering purpose, use of terms, scope, without prejudice to national rules, the assessment process focusing on intention, the role of express indications, and an intention to develop further conclusions regarding the relevant indicators in the coming reports after additional State information is gathered. The special rapporteur underlines the benefit of a non-prescriptive and flexible approach that respects State practice and the fluid nature of such agreements in international relations while enhancing legal clarity.

259. Finally, the report notes that future work will focus on both clarifying the indicators for distinguishing treaties from non-legally binding agreements and on the legal implications or consequences arising from non-legally binding international agreements. This approach reflects the Commission's method of incremental, consultative clarification in this evolving field of international law.

260. Based on each of the issues addressed in the report the special rapporteur proposed the following draft conclusions for the consideration of the Commission:

Text of the draft guidelines proposed in the third report of the special rapporteur

Draft conclusion 1

Purpose

1. The present draft conclusions concern non-legally binding international agreements.

2. The present draft conclusions are not intended to be prescriptive. They are intended to provide elements of clarification with regard to non-legally binding international agreements.

3. The present draft conclusions do not affect the role played by non-legally binding international agreements in international cooperation, and the flexibility that characterizes their negotiation and adoption.

4. The present draft conclusions do not affect the binding force of treaties under the principle *pacta sunt servanda* or their regime.

Draft conclusion 2

Use of terms

1. For the purposes of the present draft conclusions, the term "non-legally binding international agreement" is used in a general sense to refer to any mutual commitment entered into at the international level which, as such, does not create any rights or obligations or has no binding legal effect.

2. The use of the term "agreement" in the present draft conclusions is without prejudice to:

(a) the use of this term and the meaning which may be given to it in the internal law or the practice of a State;

(b) the meaning given to this term in any specific international instrument.

Draft conclusion 3

Scope

1. The present draft conclusions cover bilateral and multilateral agreements:

(a) in writing;

(b) of an international nature;

(c) between States, States and international organizations or between international organizations.

2. Agreements entered into by sub-State authorities are covered by the present draft conclusions to the extent that they are adopted at the international level.

Draft conclusion 4

Without prejudice clause to rules or practices applicable at the national level

The present draft conclusions are without prejudice to any rules or practices applicable at the national level in relation to non-legally binding international agreements.

PART TWO. DISTINCTION BETWEEN TREATIES AND NON-LEGALLY BINDING INTERNATIONAL AGREEMENTS

Draft conclusion 5

Assessment of whether an agreement is legally binding or not

1. Whether an agreement is legally binding or not is assessed on a case-by-case basis.

2. Whether an agreement is legally binding or not depends on the intention of the parties to the agreement. In the absence of any intention by the parties to be legally bound by the agreement, it is not legally binding.

Consideration of the topic by the Working Group

261. Owing to limitations of time, the Commission held only a preliminary exchange of views, with the understanding that the topic would receive fuller consideration at its forthcoming session. Nevertheless, members engaged in substantive discussion of the issues raised, offering both general assessments and specific observations on the draft conclusions proposed.

262. Members expressed appreciation for the overall approach taken by the Special Rapporteur, noting in particular the clarity, caution, and non-prescriptive nature of the second report. The importance of the topic was reaffirmed, especially in view of the increasing frequency with which States and international organizations resort to non-legally binding instruments in the conduct of international relations. The main challenge, as identified in the debate, lies in striking an appropriate balance between the provision of legal certainty for States and the preservation of flexibility necessary in practice.

263. Reference was made to the judgment of the ICJ in the case concerning *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea),* in which the Court emphasized the central importance of the intention of the parties. It was generally acknowledged that this position lends support to the methodology and proposals advanced in the report.

264. With regard to the purpose of the topic, the Commission reaffirmed that its principal objective is to identify and clarify the distinguishing features of non-legally binding international instruments when compared with treaties. Some members proposed that the statement of purpose set out in draft conclusion 1 would be better placed within the commentary, and that the text of the draft conclusion itself might be made more concise.

265. On the scope of the Commission's work, members expressed general support for the limitation, reflected in draft conclusion 3, to written instruments concluded between States, between States and international organizations, or between international organizations inter se. Attention was drawn to the need for further inquiry into the status of instruments concluded at the international level by ministries or sub-State authorities, particularly for purposes of clarity in terminology.

266. Considerable discussion was devoted to the designation of the instruments under consideration. Several members favoured the continued use of the term "agreements," in view of its consistency with the Vienna Convention on the Law of Treaties and its *travaux préparatoires*. Others observed that the term may be misleading or problematic in certain legal systems and

linguistic contexts, and called for openness to alternative formulations, such as "instruments." The Commission agreed to maintain the existing terminology provisionally, without prejudice to the eventual decision once States and the Sixth Committee of the General Assembly have provided their views. It was also emphasized that non-legally binding agreements are not governed by international law, and clarification was sought concerning their relation to Article 38 of the Statute of the International Court of Justice.

267. Draft conclusion 5, which addresses the determination of whether an instrument is legally binding, received broad support. Members emphasized that the essential criterion for such determination is the intention of the parties. Various indicators were noted as potentially relevant, including the wording of the instrument, the circumstances of its conclusion, subsequent conduct of the parties, the presence of final clauses, provisions on applicable law, registration with the United Nations, the inclusion of dispute settlement provisions, and any express declaration of non-binding character.

268. While the usefulness of setting out such indicators was acknowledged, caution was urged against an overly detailed or prescriptive approach that might impede the natural evolution of State practice. Some members suggested that the indicators might be set out in a non-exhaustive list in an annex or placed in the commentary. Others proposed that the order of the analysis in draft conclusion 5 be revised so as to foreground more prominently the primacy of intention.

269. Draft conclusion 6, which concerns instruments in which the parties expressly determine the binding or non-binding nature of their commitments, was supported in principle. However, certain members voiced concern that this text did not adequately address situations in which no such explicit provision is made, suggesting that such issues be elaborated upon in the commentary rather than in the draft conclusions themselves.

270. On the question of the appropriate form of the Commission's final output, a significant number of members expressed support for draft conclusions, viewing them as a practical means of providing guidance to States in understanding and clarifying their practice. Other members questioned whether draft conclusions were appropriate to this topic, noting that conclusions are

often reserved for subjects closely related to the formal sources of international law. Irrespective of the final form to be adopted, there was broad agreement on the importance of renewing the Commission's call to States to contribute examples of their practice with respect to non-legally binding instruments.

271. In sum, the preliminary discussion confirmed the broad utility and practical significance of the topic. Members welcomed the progress made in clarifying the distinctive elements of non-legally binding international instruments, particularly with reference to the centrality of the intention of the parties. At the same time, the debate highlighted the need for further consideration of several outstanding issues, including the most appropriate terminology, the scope of the topic, the extent to which indicators should be elaborated in the draft conclusions, and the form of the Commission's eventual output. These matters will be taken up more fully in the Commission's forthcoming session, with the benefit of further input from States and the General Assembly.

C. Present status and future work

272. The second report of the special rapporteur on the topic proposed 6 draft conclusions to referred to the drafting committee for consideration on the basis and in the light of the discussions to be held in the session next year.

273. As regards the future work on the topic the report notes that the special rapporteur plans to devote his third report to be submitted next year to continue his work on the indicators for distinguishing between treaties and non-internationally binding international agreements and to begin to study the legal implication or consequences of non-legally binding international agreements.

D. Comments and Observations of the AALCO Secretariat

274. In view of the growing practice of non-legally binding international agreements in international relations, the topic is a timely response to the needs of Member States for certainty

and clarity. The focus of the report on terminology, scope and identification factors of non-legally binding factors follows a thorough approach of examining the various sources including treaties, jurisprudence of international and national courts and tribunals, other codification efforts, legislation and other forms of practice. One of the questions on which the report expresses a position on is the use of the terms in the context of the topic, particular the express preference for the term “agreement”.

275. Further in consonance with the choice of draft conclusions of the final outcome of the topic the without prejudice clause in draft article 4 preserves rules and practices in municipal law and practice on non-legally binding agreements. Finally, the identification of non-legally binding international agreements by reference to explicit and implicit factors surrounding the agreement seems to be supported by considerable practice.