

Statement by the Republic of Cyprus

Item 82 (Cluster II) – Report of the International Law Commission Session, Sixth Committee, 76th UN General Assembly, 1 Nov. 2021

[Delivered by Haris Chrysostomou, First Secretary and Sixth Committee Expert]

Madame Chairperson,

As this is the first time that Cyprus takes the floor under your Chairmanship, I would like to join the previous speakers in congratulating you and the esteemed members of the Bureau on your election and wish every success in your work. My delegation would also like to thank Ambassador Mahmoud D. Hmoud, the Chair of the International Law Commission for the presentation of the Commission's report, and to express its gratitude to the members of the Commission for their valuable work during this year despite the difficult circumstances arising out of the COVID-19 pandemic. In this respect, we welcome the Commission's efforts in adapting its working methods during the pandemic and for the consequent progress it has made on its agenda. Cyprus has consistently supported the Commission and continues to attach great importance to the ILC's work in contributing to the codification and progressive development of international law. It is for this reason that

Cyprus wishes to comment on **Chapter IX (Sea-level rise in relation to international law)**.

Rising sea levels pose a grave threat to the lives and livelihoods of populations across the globe and, in particular, those of low-lying coastal states and small-island developing states. Indeed, as an island-state itself, Cyprus has experienced directly the gravity of various consequences of climate change, including climate change-induced sea level rise.

Among the many concerns, low-lying coastal states and small-island states face the threat to their very existence through partial or even total de-territorialization. This grave

prospect may also mean that affected states could lose their permanent population. While efforts to curb emissions and practical remedial measures should continue to be enforced as a priority, legal clarification as to the possible effects of rising sea levels may provide some assistance.

Cyprus expresses its appreciation to the Study Group for its work to undertake a mapping exercise of the legal implications of sea-level rise. We note the issuance in February 2020, of the first issues paper on the sub-topic related to the Law of the Sea (A/CN.4/740 and Corr.1), which contains preliminary observations for which there is lack of agreement amongst the Commission's members, together with a preliminary bibliography (A/CN.4/740/Add.1), which should continue to be updated. We await with interest the issuance of the second and third – issues papers related to Statehood and to the protection of persons affected by sea-level rise.

On the scope of the topic, it bears reminding that the Study Group has undertaken to simply outline key issues on three identified areas. It has no mandate whatsoever to propose modifications to existing international law, including the customary nature of the UN Convention on the Law of the Sea (UNCLOS) and, in particular, Article 121 on the regime of islands. My delegation cannot overstate the indispensability of fully respecting the letter and spirit of UNCLOS in conducting such work and of ensuring that the content of the said study will fully comply with the Convention. Cyprus shares the concern of many of the members of the Committee, as it was reported in this year's ILC Report, as well as the concerns of many member states as regards to the ILC tampering with the regime of islands. This is strictly outside of the scope of the ILC's mandate. Cyprus calls for caution in addressing this topic.

We further stress the need for the work of the Commission to be guided by its previous work and by the input of the member states. It is also important to take into account the work already done on the subjects by the International Law Association (ILA), including its conclusion that baselines should be fixed and not ambulatory, on which we will elaborate shortly.

With regard to the substance of the topic, Cyprus wishes to make the following comments:

In order to address effectively the matter of coastal erosion, affected coastal states should be entitled to designate permanent baselines pursuant to Article 16 of UNCLOS, which would withstand any subsequent regression of the low-water line. This view is in conformity with UNCLOS and aims at safeguarding coastal states' legal entitlements in light of the ongoing, worrisome developments generated by climate change.

Moreover, baselines must be permanent and not ambulatory so as to achieve greater predictability on maritime boundaries. The position is in line with UNCLOS and international jurisprudence.¹ Fixing baselines at a certain point in time by way of maritime delimitation agreement and the decisions of the ICJ, ITLOS and arbitral tribunals established pursuant to UNCLOS, and other means is also consistent with the Vienna Convention on the Law of Treaties ("VCLT").

In this respect, the principle of fundamental change of circumstances (*rebus sic stantibus*) enshrined in Article 62(1) of the VCLT,² would have no effect on existing maritime delimitation treaties.³ Article 62(2)(a) of VCLT specifically provides that a fundamental

¹ *Maritime Boundary Arbitration in the Bay of Bengal* (India v. Bangladesh), Award, 7 July 2014, paras. 214-215: "In the view of the Tribunal, this argument is not relevant. *The issue is not whether the coastlines of the Parties will be affected by climate change in the years or centuries to come.* It is rather whether the choice of base points located on the coastline and reflecting the general direction of the coast is feasible in the present case and at the present time ... *The Tribunal is concerned with the "physical reality at the time of determination. It need not address the issue of the future instability of the coastline."* (Emphasis added).

² Article 62(1) VCLT reads: "A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty".

³ See *Aegean Sea Continental Shelf Case*, para. 85 ("The dispute relates to the determination of the respective areas of continental shelf over which Greece and Turkey are entitled to exercise the sovereign rights recognized by international law . . . Whether it is a land frontier or a boundary line in the continental shelf that is in question, *the process is essentially the same, and inevitably involves the same element of stability and permanence, and is subject to the rule excluding boundary agreements from fundamental change of circumstances.*") (emphasis added). See also *Guinea-Bissau/Senegal*, para. 63; see also *Maritime Boundary Arbitration in the Bay of Bengal* (India v. Bangladesh), Award, 7 July 2014, para. 218 ("The possibility of change in the maritime boundary established in the present case would defeat the very purpose of the delimitation.").

³ See ILA Committee on International Law and Sea Level Rise, Final Report (Sydney, 2018), p. 12.

change of circumstances may not be invoked as grounds for terminating or withdrawing from a treaty if “the treaty establishes a boundary.” Cyprus contends that this fundamental rule, intended to ensure the stability of international borders, applies to both land boundaries and maritime boundaries. Thus, the effects of rising sea levels on baselines should have no legal effect on the status of a concluded maritime treaty.

We, therefore, agree with the observations of the Mr Yacouba Cissé, Co-Chair of the Study Group, as mentioned in paragraph 261 of this year’s ILC Report, that the limitation on the application of the principle of *clausula rebus sic stantibus*, as provided for in Article 62(2) of the VCLT seemed also applicable to maritime boundaries in the light of existing case law recognizing that there was no need to distinguish between land and maritime boundaries. This view is contingent on and reflects the pertinent international jurisprudence.

Furthermore, it is evident that the obligation under Article 16 of UNCLOS for the coastal state to show the baselines for measuring the breadth of the territorial sea, or the limits “derived therefrom”, on charts or a list of geographical coordinates of points, is meant to establish legal security. No indication is provided for that these charts are to be periodically revised.

Finally, as regards to questions of Statehood, we wish to highlight that the late Judge James Crawford, who devoted the last chapter of his treatise *The Creation of States in International Law*, noted that “[a] state is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three.”⁴ We look forward to receiving the upcoming materials on the subject and therefore reserve our views in this regard.

A detailed version of this statement was sent to the 6th Committee Secretariat and will be shared in the UN e-Statements website.

⁴ J. Crawford, *The Creation of States in International Law* (Clarendon Press, 2nd rev. ed. 2006).

I thank you for your attention.
