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Chair: Mr. Marschik (Chair) (Austria)
later: Mr. Grünwald (Vice-Chair) (Slovakia)
later: Mr. Marschik (Chair) (Austria)

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The meeting was called to order at 3.05 p.m.

Agenda item 71: Promotion and protection of human rights (continued) (A/78/198)

- (a) **Implementation of human rights instruments** (continued) (A/78/40, A/78/44, A/78/48, A/78/55, A/78/56, A/78/240, A/78/263, A/78/271, A/78/281, A/78/324 and A/78/354)
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- (c) **Human rights situations and reports of special rapporteurs and representatives** (continued) (A/78/204, A/78/212, A/78/223, A/78/244, A/78/278, A/78/297, A/78/299, A/78/326, A/78/327, A/78/338, A/78/340 and A/78/511)
- (d) **Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action** (continued) (A/78/36)

1. **Mr. Boyd** (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), introducing his report on the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights (see A/78/168), said that States must enact, implement and enforce stronger laws and policies to protect the environment and tackle the worsening climate crisis. However, such essential action could be blocked by investor-State dispute settlement mechanisms in international trade and investment treaties, which empowered foreign investors to sue States for exorbitant sums of money in compensation for the fall in value of an asset or lost future profits. The number of investor-State claims targeting actions by States to protect the environment had skyrocketed from 37 in 2000–2010 to 126 in 2011–2021. States were, in effect, being penalized for taking legitimate climate and environmental action, such as banning offshore oil exploration or prohibiting fracking. Some States had already taken steps to avoid such

claims, including by renegotiating trade and investment treaties, eliminating investor-State dispute settlement mechanisms and withdrawing from treaties carrying a high risk of claims. Another option available to States was to unilaterally withdraw consent to arbitration, which would preclude future claims but would not affect existing dispute settlement cases. The investor-State dispute settlement system was incompatible with States' international human rights obligations and must be changed. Under that system, States that were attempting to tackle the climate and environmental crisis and safeguard the human rights of their peoples were being forced to pay billions of dollars in compensation to corporations that had contributed to that very crisis.

2. **Ms. Wagner** (Switzerland), speaking also on behalf of the other members of the core group on human rights and the environment (Costa Rica, Maldives, Morocco and Slovenia), said that the group wished to know the Special Rapporteur's views on what the impact of General Assembly resolution 76/300 had been, since its adoption in 2022, on the realization of the right to a clean, healthy and sustainable environment, and which elements of the resolution most needed implementing by States.

3. Speaking in her national capacity, she said that her delegation, while sharing some of the concerns outlined in the report, wished to highlight the fact that some States had already taken steps to address the issue at hand, including by renewing bilateral investor protection agreements and participating in international forums such as the United Nations Commission on International Trade Law (UNCITRAL). Her delegation encouraged all States to join such efforts.

4. **Ms. Andújar** (Dominican Republic) said that her delegation wished to hear the Special Rapporteur's views on the potential challenges and strategies involved in fostering a global consensus on the elimination of investor-State dispute settlement mechanisms. She asked the Special Rapporteur how States could establish an effective balance between protecting human rights, promoting environmental sustainability and encouraging sustainable investment within the framework of reformed international investment agreements.

5. **Ms. Usabiaga** (Mexico) asked how States could guarantee the right to a safe, clean, healthy and sustainable environment amid the transboundary effects of climate change, biodiversity loss, air, water and soil pollution and other global phenomena.

6. **Mr. Talavera** (Spain) said that his country was in the process of withdrawing from the Energy Charter Treaty, an agreement that had served as the legal basis for 51 arbitration claims that had been brought against Spain. His delegation wished to know whether the

Special Rapporteur considered States' current responses to be adequate, and what steps States should be taking to address the issue effectively.

7. **Ms. Orduz Duran** (Colombia) said that her delegation would be interested to hear the Special Rapporteur's comments on how Member States could guarantee a universal and inclusive framework for dialogue, which would allow for the swift creation of solutions to the challenges identified in his report.

8. *Mr. Grünwald (Slovakia), Vice-Chair, took the Chair.*

9. **Mr. Zavala Porras** (Costa Rica) said that his delegation wished to know what channels were available to States and to the United Nations to ensure that investor-State dispute settlement mechanisms were reformed to respect human rights and the environment. His delegation also wished to know how States could facilitate the full participation of civil society, Indigenous Peoples and environmental defenders in such mechanisms.

10. **Mr. Zitko** (Slovenia) said that, as a long-standing supporter of the right to a safe, clean, healthy and sustainable environment, his country remained committed to engaging in open, transparent and inclusive dialogue with all States and stakeholders with a view to realizing that right.

11. **Ms. García Hernández** (Cuba) said that an international order that condemned States for protecting the environment must be replaced. The countries of the global South should not have to pay the environmental debt incurred by the global North. Her Government would support any effort aimed at recognizing the human right to a clean, safe, healthy and sustainable environment.

12. **Mr. Šukurica** (Croatia), speaking as a youth delegate, said that ensuring the meaningful and effective participation of young people in the response to climate change and environmental degradation was of the utmost importance. He asked the Special Rapporteur what youth delegates could do to ensure that the views and experiences of young people, especially those in poor and marginalized communities, were taken into account in global environmental decision-making processes.

13. **Ms. Szelivanov** (Representative of the European Union, in its capacity as observer) said that the efforts to reform the dispute settlement system mentioned in the report, including those by UNCITRAL, were proposals worth considering. The European Union and its member States were currently discussing the establishment of a multilateral investment court that would allow for appeals, which would address concerns relating to the consistency and legitimacy of investment dispute

resolution. She asked the Special Rapporteur to identify critical action that Member States should take in the near future to address the problems with investment-State dispute settlement.

14. **Ms. Vlokhoven** (Luxembourg) asked whether the Special Rapporteur could comment on how the international community could guarantee a uniform approach for States to address the incompatibility between the current investor-State dispute settlement system and goals relating to the climate, the environment and human rights, while also taking into account challenges relating to justice and the rule of law in some low-income countries.

15. **Mr. Lang** (United States of America) said that, as noted in the report, work was already being done by UNCITRAL to reform the investor-State dispute settlement system. His delegation was extremely concerned about the safety of environmental defenders worldwide and wished to ask the Special Rapporteur how he might, in his role, accelerate countries' implementation of principle 10 of the Rio Declaration on Environment and Development, thereby supporting and protecting environmental defenders.

16. **Ms. Fernández** (Chile) said that her delegation would like to hear the Special Rapporteur's opinion on the three requests for advisory opinions on the environment currently before the International Court of Justice, the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights, and about the role that those courts might play in relation to the climate emergency and the protection of the environment.

17. **Mr. Zumilla** (Malaysia) said that the Special Rapporteur had suggested in his report that multilateral mechanisms might be needed to address issues with the current investment treaty system. He asked the Special Rapporteur to share his vision for such multilateral mechanisms and how he envisaged that countries and stakeholders might work together to create them, including the challenges that they might face in doing so.

18. **Mr. Kuzmenkov** (Russian Federation) said that his Government supported increasing the effectiveness of current international legal mechanisms in relation to environmental protection but considered the link between the protection of human rights and that of the environment to be somewhat artificial. Environmental rights were not regulated under international human rights law, nor was the right to a safe, clean, healthy and sustainable environment included in environmental agreements or human rights conventions. Rather than imposing such rights, which were, legally speaking, ill-defined, it would be better to raise awareness about them

to avoid any grounds for conflict. Some countries were endeavouring to use such rights to further their political and economic interests.

19. **Ms. Meizura** (Indonesia) said that the Special Rapporteur must endeavour to avoid including obsolete information in his reports in order to accurately reflect progress on the ground. Her Government continued to abide by its steadfast and long-standing commitment to promote and protect the right to a safe, clean, healthy and sustainable environment. That commitment was evidenced in its domestic legislation and its efforts to engage with businesses on corporate responsibility for the respect of human rights. In 2021, her Government had launched a web-based impact assessment tool, PRISMA, for companies to use to identify and mitigate the potential impact of their business activities on human rights, including in the environmental sphere.

20. **Mr. Liu Luoge** (China) said that his delegation was gravely concerned about the discharge of contaminated water from the Fukushima nuclear facility into the ocean by the Government of Japan, in disregard of the right to a safe, clean, healthy and sustainable environment of both its own and other peoples. Such action was selfish, self-serving and irresponsible. Japan had yet to prove the legitimacy, legality and long-term reliability of the treatment facilities, let alone the accuracy of the data on the wastewater. His Government urged Japan to take heed of the international community's concerns, communicate fully and in good faith with neighbouring countries and dispose of radioactive water responsibly. He asked the Special Rapporteur how countries might use international cooperation to safeguard their peoples' right to a safe, clean, healthy and sustainable environment.

21. **Ms. Blackett** (Observer for the Sovereign Order of Malta) said that the right to a safe, clean, healthy and sustainable environment should be not only recognized in theory, but also upheld in practice. The Sovereign Order of Malta had launched sustainable programmes to that end, introducing crops adapted to the local arid climate in India in support of local Indigenous Peoples and fostering mangrove forests in Colombia, thereby providing carbon-capture ecosystems, coastal defence against the rising sea level and a means to filter pollution.

22. **Ms. Jaffe** (Observer for the International Union for Conservation of Nature) said that her delegation had noted the Special Rapporteur's call in his report for the negotiation of new international investment agreements that protected human rights and the environment. Further information from the Special Rapporteur on a potential process for such negotiations, and the key principles that should be observed, would be welcome.

23. **Mr. Ono** (Japan) said that his delegation would like to ask the Special Rapporteur to elaborate further on his efforts to work with multilateral trading systems, such as the World Trade Organization, the United Nations Conference on Trade and Development, the International Trade Centre and the Organisation for Economic Co-operation and Development (OECD), and also with stakeholders in free trade and economic partnership agreements. In response to the allegations made earlier in the meeting concerning the discharge into the sea of water treated using the Advanced Liquid Processing System, he wished to reiterate that his Government would continue to engage with the international community in a transparent manner and stood ready to discuss any details regarding its actions.

24. **Mr. Boyd** (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment) said that he recognized the ongoing efforts being made through international mechanisms, such as UNCITRAL, to remedy the problems with investor-State dispute settlement. However, evidence suggested that such efforts were unlikely to be fruitful. Arbitrators were not bound by domestic law and continued to rule in favour of investors, even where second-generation bilateral investment agreements were in force.

25. In his view, the next step should be to eradicate investor-State dispute settlement entirely. To do so, developing States, in particular the Group of 77 and China, in collaboration with the Alliance of Small Island States, should make a collective effort to terminate existing international investment agreements with other States, beginning with European Union member States, Canada and the United States, all of which had already taken similar action to reduce their exposure to investor-State dispute settlement claims. He wished to draw the attention of Member States to the findings of research by OECD, which showed that trade and investment treaties made no tangible difference to the amount of foreign direct investment received by a State.

26. As to the impact of General Assembly resolution [76/300](#), the effects were already evident at the national level, where domestic courts had begun referring to the resolution and the wording of the resolution had been incorporated into national legislation, and at the international level. In the previous year alone, the right to a clean, healthy and sustainable environment defined in the resolution had been included in the Sharm el-Sheikh Implementation Plan adopted during the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in November 2022; the Kunming-Montreal Global Biodiversity Framework adopted during the

fifteenth session of the Conference of the Parties to the Convention on Biological Diversity in December 2022; and general comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, adopted by the Committee on the Rights of the Child and published in August 2023.

27. Moving forward, action to further advance the right to a clean, healthy and sustainable environment should be focused on strengthening legal recognition. The right should be the subject of a new international covenant and should be incorporated into international agreements currently under negotiation, including those on plastic pollution, pandemic prevention, preparedness and response, and business and human rights. He urged the member States of the Council of Europe to support the initiative currently under discussion to add a protocol on the right to a clean, healthy and sustainable environment to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and also urged Member States in Africa and South-East Asia to support current initiatives to develop regional environmental democracy agreements. He further urged all Member States that did not already recognize the right in their domestic legal frameworks to do so as soon as possible. Another key area of action for States was implementation. The third and final crucial area for action was monitoring and evaluating progress on implementation, which was the responsibility of United Nations treaty bodies, special procedures and processes such as the universal periodic review.

28. *Mr. Marschik (Austria) resumed the Chair.*

29. **Mr. Fry** (Special Rapporteur on the promotion and protection of human rights in the context of climate change), introducing his report on exploring approaches to enhance climate change legislation, supporting climate change litigation and advancing the principle of intergenerational justice (see [A/78/255](#)), said that a growing body of work linked climate change responsibilities to human rights treaty obligations. He wished to stress that, amid growing frustration and instances of Government suppression of public dissent, including the arrest, imprisonment and even extrajudicial killing of environmental rights defenders, the right to freedom of expression, as set out in article 19 of the International Covenant on Civil and Political Rights, must be respected.

30. In his report, he had outlined the importance of ensuring that climate change legislation addressed not only national determined contributions but also adaptation, capacity-building, education, procedures for addressing loss and damage, climate change displacement and obligations to protect the human rights

of various rights holders, including Indigenous Peoples and persons with disabilities. He had noted that climate change litigation could drive legislative and policy change and positively influence future responses to climate change. A number of advisory opinions had been sought to clarify the legal obligations of States with respect to climate change. It was his firm belief that States had both a legal and moral responsibility to ensure that greenhouse gas emissions produced in one State did not harm another. Lastly, he had emphasized the vital importance of the international community addressing the fate of both current and future generations. Although there was a growing body of jurisprudence on intergenerational equity and justice, there was no clear expression at the international level of the rights of future generations. The Maastricht Principles on the Human Rights of Future Generations, which had been produced by a group of legal experts, could serve to bridge that gap.

31. **Ms. Andújar** (Dominican Republic) asked the Special Rapporteur to outline specific measures that States had already taken, or were planning to take, to incorporate his recommendations relating to intergenerational equity, corporate responsibility and access to justice into their climate change legislation.

32. **Ms. Orduz Duran** (Colombia) said that her delegation would be interested to hear the Special Rapporteur's view on how an approach based on human rights and environmental justice could best be incorporated, thereby guaranteeing coherent environmental governance at the global level.

33. **Ms. Micallef** (Malta) said that the impact of climate change varied according to intersectional factors such as race, gender, age and socioeconomic status. In view of that, she asked the Special Rapporteur to expand on the assertion in his report that certain aspects of intersectionality limited access to courts.

34. **Mr. Kastanias** (Greece) said that his delegation would welcome the Special Rapporteur's opinion on how a coordinated, whole-of-government and human-rights-based approach could be reflected in climate change legislation.

35. **Ms. Szelivanov** (Representative of the European Union, in its capacity as observer) said that, as the incorporation of human rights obligations into climate change legislation was a new phenomenon, further details on how Member States could identify and address gaps in their national legislation would be appreciated. In addition, her delegation would welcome practical recommendations on how Member States could incorporate a gender perspective into climate

change legislation, especially in relation to mitigation and adaptation.

36. **Ms. Kim** (Australia) asked how States might be best supported in strengthening the capacity of their judicial systems to hear and respond to human-rights-based climate change litigation.

37. **Ms. Alaoui** (Morocco) said that her delegation would be interested to hear the Special Rapporteur's thoughts on how Member States could ensure that environmental policies and programmes were safe, resilient, sustainable and respectful of human rights. Additional information on the intergenerational justice initiative mentioned in his report would be appreciated.

38. **Mr. Šukurica** (Croatia), speaking as a youth delegate, said that he would like to know how youth delegates could ensure that the views and experiences of young people and children were taken into account in global environmental decision-making processes, and what further action might best promote the fulfilment of human rights obligations in the context of climate change.

39. **Mr. Wennholz** (Germany) asked how, from the Special Rapporteur's perspective, Member States could best ensure that persons in marginalized and vulnerable situations were prioritized in adaptation plans and supported in building their resilience against the impacts of climate change.

40. **Mr. Hubatta** (Switzerland) said that his delegation would be interested to learn what action could be taken to protect environmental defenders and how the Special Rapporteur might collaborate with the Special Rapporteur on the situation of human rights defenders to that end.

41. **Mr. Zavala Porras** (Costa Rica) said that his delegation would be grateful to hear the Special Rapporteur's views on how the advisory opinions mentioned in his report could, first, consolidate a human-rights-based approach to the fight against climate change and, second, strengthen the influence of science on climate litigation and also on adaptation and mitigation policies.

42. **Mr. Di Capua** (Italy), speaking as a youth delegate, said that the recommendations set out in the Maastricht Principles on the Human Rights of Future Generations were of strategic importance, in particular the notion that young people represented a bridge to future generations and that their perspectives must be accorded special weight when considering future generations' human rights. Information on best practices – if, indeed, any had yet been established – on the successful incorporation of those Principles into

current national and international legislation would be welcome.

43. **Ms. Pella** (Indonesia) said that the Special Rapporteur must ensure the inclusion of up-to-date information in his report. Human rights had been mainstreamed in all laws and regulations on climate change in Indonesia and several cases involving human rights and climate change had been received and resolved by the judiciary at the national and local levels. Her delegation would like to hear further details on the Special Rapporteur's intergenerational justice initiative.

44. **Ms. Kabua** (Marshall Islands) said that further exploration of the issue of jurisdiction in small island developing States might be worthwhile, as they were most at risk of the effects of climate change. It was important to observe that nations were working to address the link between security and human rights.

45. **Ms. de Tejada** (Liechtenstein) said that, amid evidence from recent litigation that climate change had a disproportionate impact on women and girls, her delegation would be grateful if the Special Rapporteur could elaborate further on the gendered impact of climate change and how that should be better reflected in legislation and mitigation efforts.

46. **Ms. Fernández** (Chile) said that her country had recently approved its first Climate Change Framework Act, which included a human-rights-based approach and provided that mitigation and adaptation plans must include a gender perspective and consideration of vulnerable groups. Her delegation encouraged other States to update their sectoral legislation in line with the Special Rapporteur's recommendations.

47. **Mr. Zumilla** (Malaysia) asked how States might be able to prioritize the recommendations in the report amid other competing priorities and resource constraints.

48. **Mr. Kuzmenkov** (Russian Federation) said that his Government opposed attempts to shift the focus of the United Nations Framework Convention on Climate Change and create duplicate treaty obligations. Such attempts would be unlikely to reduce the rate of global warming and would serve instead to create an additional burden for domestic legal systems. His Government was concerned about tendencies towards changing United Nations programmes and mandates relating to the environment and climate.

49. **Mr. Worthe** (United States of America) said that his delegation would be interested to hear the Special Rapporteur's views on what could be done at the global level to ensure that climate resilience and adaptation plans better accounted for the needs of the most vulnerable.

50. **Mr. Abdullah** (Bangladesh) said that he wished to know how the Special Rapporteur intended to engage with countries that were most responsible for climate change with a view to encouraging them to amend their constitutions not only to protect the human rights of their own citizens but also to support countries that bore the least responsibility for climate change and help them to meet their obligations.

51. **Mr. Liu** Luoge (China) said that his Government wished to affirm the importance of common but differentiated responsibilities in addressing climate change. As a developing country, China had proactively assumed obligations commensurate with its state of development, national circumstances and capacity. Developed countries had a historical responsibility for climate change and must therefore meet their pledges in good faith, including honouring their official development assistance commitments and providing \$100 billion in climate finance.

52. **Ms. Hameed** (Maldives) said that her delegation welcomed the Special Rapporteur's recommendation that new climate change legislation should facilitate easy access to international funds for mitigation, adaptation and loss and damage. It would be a terrible injustice if small island developing States were to endure the disproportionate impact of climate change without the backing of the international community.

53. **Mr. Triptrap** (Sovereign Order of Malta) asked the Special Rapporteur what steps he planned to take to motivate high-level stakeholders, such as State actors and transnational businesses, to acknowledge their impact and engage in constructive dialogue with local actors to take effective action.

54. **Mr. Fry** (Special Rapporteur on the promotion and protection of human rights in the context of climate change) said that climate change was indeed an intersectional issue that affected different groups in different ways, a fact that should be recognized in climate legislation accordingly. He lauded the mention of a whole-of-government approach, which should be adopted when making constitutional and legislative changes. The incorporation of gender perspectives into climate change legislation was critical to ensuring that women were able to engage fully in all aspects of decision-making on climate change: mitigation; adaptation; finance; and loss and damage. As to strengthening the judiciary, dedicated programmes should be organized – potentially with the support of United Nations agencies, such as the United Nations Environment Programme – to train judges and other members of the judiciary.

55. Advisory opinions were a key means of influencing the development of jurisprudence on transboundary harm and the rights of future generations. The Maastricht Principles on the Human Rights of Future Generations provided useful guidance in that regard. He strongly encouraged Member States to hold a debate on how to enshrine those Principles in a General Assembly resolution. Youth engagement was one important element, which had already been supported by a number of States that had sponsored the participation of 100 young people in delegations attending the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. He encouraged States to also support the participation of children in decision-making processes. Lastly, he thanked the delegation of the Marshall Islands for mentioning the link between climate change and security issues, a topic that should be the subject of an involved dialogue.

56. **Mr. Orellana** (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), introducing his report on shipping, toxics and human rights (see [A/78/169](#)), said that the international shipping industry, although key to the functioning of the global economy, was a source of serious human rights and environmental concerns. Certain groups, such as coastal communities and seafarers, were particularly vulnerable to the adverse impacts of shipping, including toxic oil spills and pollution. Efforts had been made to reduce the environmental and human rights impact of the shipping industry, including the adoption of International Maritime Organization conventions. However, without adequate membership and enforcement, the impact of those conventions was vastly reduced. Efforts must, as a matter of urgency, be made to better enforce those conventions, including by providing technical cooperation and capacity-building to flag States requiring support.

57. **Ms. Fernández** (Chile) said that her delegation welcomed the emphasis in the report on the responsibility of businesses to promote and protect human rights, including by conducting due diligence.

58. **Mr. Chaouki** (Morocco) said that access to information was crucial to preventing human rights violations arising from exposure to hazardous substances and wastes, but such information was often not available or accessible. Furthermore, effective control of the production, storage, treatment, recycling and reuse, transport and elimination of hazardous wastes was of the utmost importance for human health, environmental protection, natural resource management and sustainable development and would require the

cooperation and participation of Governments and industry. In that regard, he asked the Special Rapporteur to share his views on the precautionary principle and on the importance of involving independent scientists who were free from conflict of interest.

59. **Mr. Orellana** (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes) said that a global science-policy panel on chemicals, waste and pollution prevention was being established. Conflicts of interest would undermine the panel's ability to provide sound advice on tangible action to address the toxification of the planet and were therefore the subject of careful attention. The principle of precaution could be incorporated into such advice and also into several other issues addressed in his report. He wished to highlight, in particular, the need to close a gap in international law to ensure that coastal communities affected by plastic contamination were protected; the importance of assessing not just the greenhouse gas reduction potential of alternative fuels and other climate measures but also their life cycle and potential toxic impact; and the need to ensure that instruments and any amendments thereto providing for liability for oil spills were more widely ratified in order to afford adequate protection to communities and individuals harmed as the result of a spill. In addition, pollution levies should be used to improve port reception facilities in order to protect local communities from exposure to hazardous substances offloaded from vessels; the Hong Kong Ship Recycling Convention must be amended to strengthen protections in connection with the beaching of ships; and criteria for establishing links between ships and flag States, as well as mechanisms to enforce those criteria, must be established at the international level. Lastly, the prevailing opacity in the shipping industry must be tackled, including by allowing for the disclosure of information on those who benefited from the shipping industry and ensuring protection for whistle-blowers.

The meeting rose at 5.10 p.m.