



Permanent Mission of Iceland
to the United Nations

Statement by Counsellor Anna Pála Sverrisdóttir
on behalf of Denmark, Finland, Iceland, Norway and Sweden
General Assembly 76th session, 28 October 2021, Agenda item 82

Report of the International Law Commission on the work of its
72nd session, Cluster 2: Immunity of State officials from foreign
criminal jurisdiction & Sea-level rise in relation to international
law

Mme./Mr. Chair,

At the outset, I would like to thank the International Law Commission for their report.

I have the honour to deliver this statement on behalf of Denmark, Finland, Norway, Sweden - and my own country - Iceland.

-///-

Chapter VI - Immunity of State officials from foreign criminal jurisdiction.

Turning first to Chapter VI, The Nordic countries would like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her eighth report on Immunity of State officials from foreign criminal jurisdiction. We commend her enduring efforts on this matter and we congratulate her on completing the consideration of all the questions set forth in the workplan submitted to the Commission in 2012; as well

as the three additional general issues pointed out in the seventh report to be warranting further examination.

We also commend the Commission for progressing this salient topic, its legal complexity and political sensitivities notwithstanding, notably by provisionally adopting draft articles 8 ante, 8, 9, 10, 11 and 12, and the attached commentaries.

We agree with the Special Rapporteur that important substantive issues are still pending before the Commission. In particular, draft article 7 on exceptions to immunity *ratione materiae* in respect of crimes under international law will require further effort. In this regard, the Nordic countries would like to reiterate our support for draft article 7 and recall our commitment to the Rome Statute of the International Criminal Court; underlining the importance of harmonizing the draft articles with the Rome Statute.

The eighth report of the Special Rapporteur examines the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals; and it considers possible mechanisms for settling disputes between the forum State and the State of the official. The Nordic countries take note of the proposals for two draft articles, draft article 17 and 18, that have been presented on these topics.

Turning to the issue of the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals, as enshrined in draft article 18, the Nordic countries favour the inclusion of an explicit reference that recognizes the autonomy of the legal regimes applicable to international criminal tribunals. We share the view of the Special Rapporteur that a “without prejudice

clause” would be useful and appropriate means to achieve this. We agree with the Special Rapporteur in that such a clause does not go beyond the remit of the draft articles, nor does it give rise to hierarchical relationships between any rules; but rather merely separates different legal regimes, whose validity and separate fields of application will still be preserved. We therefore support the wording of draft article 18. Mindful of the similarities between draft article 18 and draft article 1, paragraph 2, both containing “without prejudice” clauses, we also agree with the Special Rapporteur that article 18 should be incorporated as paragraph 3 of draft article 1.

On the issue of mechanisms for settlement of disputes between the forum State and the State of the official, the Nordic countries reiterate that such a mechanism must provide certainty to both the forum State and the State of the official, and help reducing potential abuse of process for political purposes.

We concur with the view that the procedural mechanisms proposed in the draft articles should be seen as a whole, balancing the interests of the forum State and the State of the official, and that a dispute resolution clause could be seen as a final procedural safeguard. In this context the inclusion of a draft article relating to the settlement of disputes appears to be preferable. Furthermore, we agree with the Special Rapporteur that the final outcome of the work of the Commission would be relevant to the content of draft article 17.

In regard to draft article 17 (3), we would like to note that if the forum State is obliged to suspend the exercise of its jurisdiction until the competent organ issues a final ruling, this entails that the forum state will be forced to forfeit the custody of the official. Should the ruling of the competent body be in favour of the forum state, we would assume that regaining custody of the individual will be extremely challenging.

Hence, the proposed article 17 (3) could have the practical effect of distorting the balance of the interests of the forum State and the State of the official. We also take note of the deliberations of the Commission regarding this provision, including views and doubts expressed by some members. Consequently, this provision seems to merit further examination.

The Nordic countries look forward to the continued work of the ILC on this topic.

-///-

Chapter IX – Sea-level rise in relation to international law

Mme./Mr. Chair,

Turning to the topic of “Sea-level rise in relation to international law”, the Nordic countries remain supportive of the Commission's work on this highly significant topic. We thank the Co-Chairs for all their work thus far.

Only a few days after the session of the ILC finished this year, the Intergovernmental Panel on Climate Change presented its latest scientific report on climate change. According to the report, sea levels are sure to keep rising well beyond 2100 and will remain elevated for thousands of years. This will happen regardless of climate action taken from now on and will lead to profound changes - although the magnitude and rate of sea level rise will depend on how fast emissions will be reduced.

These developments, that the science tells us are taking place, are a matter of concern for all UN Member States. It must, however, be recognized that some States are likely to be disproportionately affected. Apart from the possibility of territory of states

going partially or fully under water, sea level rise can for instance increase land degradation, periodic flooding, and contamination of freshwater. It is a threat on multiple levels, not least for small island developing states, that have done little to cause climate change but are likely to suffer the most from it.

The IPCC is clear on that it is “unequivocal that human influence has warmed the atmosphere, ocean and land.” It is therefore pertinent that in its work on the legal aspects of sea level rise, the Commission builds on sea-level rise due to climate change as a scientifically proven fact.

Mme./Mr. Chair,

The Nordic Countries are looking forward to engaging with the Commission next year, after its Study Group addresses issues related to the subtopics of statehood as well as the protection of persons affected by sea-level rise. We reaffirm our support to the approach of three subtopics, to be included in a finalized substantive report on the topic of sea level rise.

The first subtopic was the law of the sea, discussed by the Commission this year. In this context, the Nordics cannot over-emphasize the importance of the United Nations Convention on the Law of the Sea, which sets out the legal framework within which all activities in the oceans and seas must be carried out. As the principal treaty on the modern law of the sea, it has greatly contributed to international peace and security since its adoption in 1982. Its predictability and stability, and its universal and unified character should be safeguarded and strengthened.

Like any other legal instrument, the Convention should be interpreted in light of changing circumstances. That said, it seems premature at this juncture for the Nordic

countries to pronounce on the precise legal implications of sea-level rise in the context of UNCLOS.

It is evident from the work of the ILC Study Group so far, that several issues still need to be explored and discussed. We therefore welcome extending the work of the Commission, such as on state practice and *opinio juris*.

Should it prove useful, the Nordics also support that the Commission might call upon scientific and technical experts, in a selective and limited manner. Within the law of the sea there is a growing legal, scientific, and technical interplay.

Mme./Mr. Chair,

The ILC is well positioned to assist States with increasing the legal clarity on various questions related to sea level rise. In this context it is important to be mindful of making a distinction between the legal and political aspects of addressing climate change. The Nordic countries are committed to urgent climate action and simultaneously, engaging in a structured legal discussion.

I thank you.