



**Report of the International Law Commission on the work of its
seventy-second session
(Agenda item 82)
*Statement by Portugal***

Cluster 2

**Chapters: VI (Immunity of State officials from foreign criminal
jurisdiction) and IX (Sea-level rise in relation to international law)**

**“Immunity of State officials from foreign criminal jurisdiction” –
Chapter VI of the ILC Report**

Madam Chair,

In view of time restrictions, Portugal will deliver an abridged version of its statement under this cluster. The full statement will be submitted to the Secretariat.

Allow me to first address the topic **“Immunity of State officials from foreign criminal jurisdiction”**.

We thank Ms. Escobar Hernández, the Special Rapporteur, for her eighth report, dedicated to three general issues to be examined by the Commission ahead of the conclusion of this topic in first reading – (1) the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals, (2) the possibility of establishing a mechanism for the settlement of disputes and (3) the possible inclusion of recommendations of good practices in the draft articles.

Portugal congratulates the Special Rapporteur in completing her plan of work on the topic.



We also appreciate the fact that the Special Rapporteur organised several rounds of informal consultations, before and during this session of the Commission. Those consultations proved to be useful in mitigating the difficulties brought about by the COVID-19 pandemic and in enabling the Drafting Committee to progress in its work.

Madam Chair,

International criminal tribunals are vital in the fight against impunity for the most serious crimes of international concern. *Portugal has always been a staunch supporter of special international criminal tribunals and residual mechanisms thereof, and of the International Criminal Court.*

As such, my delegation must agree with the Special Rapporteur, defending that it does not seem reasonable for the Commission to ignore the existence of international criminal tribunals when considering immunity from foreign jurisdiction, given the relationship of that issue to those tribunals.

The topic is indeed limited in scope to immunity from foreign jurisdiction. Still, the Commission must take into account the common achievements of the international community in the field of international criminal law and ensure that its current work on this topic does not alter nor compromise existing norms and principles of international criminal law.

Furthermore, the relationship between national and international courts must be considered in this topic, given that international criminal courts often rely on States for exercising their jurisdiction (due to principles on subsidiarity and complementarity and also due to State obligations on cooperation).



Portugal could support a provision on this issue in the draft articles. In stating that they are without prejudice to the rules governing the functioning of international criminal tribunals, Draft Article 18 seems to already reach three important goals: firstly, to highlight the independence of the regimes applicable to immunity before national criminal courts and from international criminal tribunals; secondly, to safeguard the application of the legal frameworks applicable to the functioning of the latter; thirdly, to present a text applicable to all States, whether or not they are Parties to the Rome Statute of the International Criminal Court.

My delegation looks forward to the outcome of the work of the Commission on such a provision, including regarding its placement.

Madam Chair,

My delegation would deem a dispute settlement clause useful, regardless of the nature of the final outcome of the work of the Commission in this topic.

Draft Article 17 as proposed by the Special Rapporteur is a good starting point for the discussion by establishing a system for the settlement of disputes divided into three consecutive phases: consultations, negotiations and recourse to arbitration or the International Court of Justice. However, Portugal reserves its position for the first reading.

Finally, regarding good practices, Portugal takes note of the views of the Special Rapporteur and of members of the Commission, as registered in the report, stating the reasoning behind the intention not to include a provision on this matter in the draft articles. In our view, the idea to include references to examples of good practices in the general commentary deserves further consideration.



Madam Chair,

To conclude, Portugal looks forward to the conclusion of the conclusion of the work of the Commission on the draft articles, and to their adoption on first reading.

“Sea-level rise in relation to international law” – Chapter IX of the ILC Report

Madam Chair,

I would now like to address the topic **“Sea-Level Rise in Relation to International Law”**.

My delegation thanks the Co-Chairs of the Study Group, Ms. Oral and Mr. Aurescu, for their First Issues Paper. The addendum to the First Issues Paper, which offers a selected bibliography on this matter, is also much appreciated. Portugal also thanks all other members of the Study Group for their active discussions during this session.

Madam Chair,

Portugal welcomes the fact that the Commission concluded that the Study Group ought to consider the topic based on the premise that sea-level rise due to climate change is a fact already proven by science.

Sea-level rise is a complex issue that is already a major threat to low-lying island nations. Moreover, we must recall that around 10 per cent of the world’s population lives in coastal areas that are less than 10 meters above sea level,



and that about 40% of the world's population lives within 100 kilometres of the coast.

With sea-level rise creating challenges expected to have a profound and widespread impact throughout the planet, the discussions on sea-level rise in relation to international law that are held at both the Commission and this Committee are very important and timely.

Madam Chair,

The First Issues Paper provides an excellent contribution in considering the possible legal effects of sea-level rise on the status of certain maritime zones and entitlements under the Law of the Sea, namely with respect to the 1982 United Nations Conventions on the Law of the Sea (UNCLOS).

Portugal salutes the approach in this First Issues Paper of mapping past and current State practice on response measures to sea-level rise, while also commenting on other useful elements – such as treaty and customary international law, judicial decisions of international and national courts and tribunals, and the analyses of scholars.

Madam Chair,

As stated in the concluding report of the UN75 Office, published in January 2021, the key findings of the UN75 survey and dialogues point out two main challenges, corresponding to two long-term priorities, that will intersect in subtopics of the future work of Study Group – climate change and human rights.

Firstly, the UN75 survey and dialogues showed that respondents in all regions identified climate change and environmental issues as the number one long-term global challenge, and "more environmental protection" ranked as the



top long-term priority around the world. Secondly, the UN75 survey and dialogues "More respect for human rights" ranked number three globally as a long-term priority.

Portugal will therefore follow with great interest the work of the Study Group, with the Second Issues Paper on the remaining subtopics of study: statehood and protection of persons affected by sea-level rise. We offer our best wishes in this endeavour to the next co-chairs of the Study Group, Mr. Juan José Ruda Santolaria and Ms. Patrícia Galvão Teles.

Portugal understands that both the First and the Second Issues Papers are intended to be preliminary in nature, and that consolidated issues papers will be prepared, reflecting the work of the Study Group discussions at the Commission and comments by States. We will thus reserve any final considerations for those consolidated issues paper.

Madam Chair,

This concludes the statement of my delegation under Cluster 2 of this agenda item.

Thank you, Madam Chair.