



Statement by H.E. Archbishop Gabriele Caccia
Permanent Observer of the Holy See to the United Nations
UNGA 76 – Sixth Committee

**Agenda Item 82: Report of the International Law Commission on
the work of its seventy-second session**

CLUSTER II

Madam Chair,

The Holy See commends the International Law Commission (ILC) for the extensive work undertaken during its seventy-second session to advance “the promotion of the progressive development of international law and its codification.”¹ My Delegation further thanks the Commission for presenting its report to this Sixth Committee.

Chapter VI – Immunity of State officials from foreign criminal jurisdiction

Madam Chair,

The immunity of State officials from foreign criminal jurisdiction has been studied by the Commission for more than a decade. This year, in light of the *Jordan Referral re Al-Bashir case*, special emphasis was rightly given to the relationship between the immunity of State officials from foreign criminal jurisdiction and the jurisdiction of international criminal tribunals.

In that context, my Delegation considers it necessary to recall that immunity of State officials is a crucial, long-standing principle of State sovereignty and international diplomacy that must be respected in order to ensure the peaceful and friendly relations among States. That immunity flows in fact from the principles of State sovereignty and non-interference in internal affairs, it protects State officials from undue and politically

¹ *Statute of the International Law Commission*, article 1.1.

motivated prosecution and facilitates diplomatic relations. Hence, while defenses based on the functional immunity of public officials should not apply in principle to the most serious crimes of international concern, from a policy point of view, the immunity *ratione personae* of the highest official of the State while in office must be preserved. As my Delegation already noted last year, respecting that immunity is in fact a precondition of the orderly conduction of international affairs and for any mediation or peacebuilding efforts. Prosecutorial discretion, undoubtedly crucial both at the national and international level, should be exercised with the greatest wisdom, particularly in cases of democratic transitions and at the end of civil wars.

The Holy See is grateful to the Commission for the careful attention it has dedicated to this topic and encourages it to continue work on the draft articles, a process that is already far advanced.

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

Madam Chair,

During its last three sessions, the Commission has discussed important questions relevant to international law stemming from the factual consequences of sea-level rise. It must be recalled, however, that sea-level rise is much more than a legal issue. It continues to impact the daily lives of millions around the world. Considering that a quarter of the world's population lives on or near a coast, and that most megacities are situated in coastal areas, the number of those impacted directly by sea-level rise will continue to increase.²

The Commission has wisely adopted an approach that looks at the issues in a broad manner, while also delineating the legal challenges posed by sea-level rise in specific legal areas, such as the law of the sea, statehood, human rights and migration. The challenge of understanding and seeking solutions to complex legal and technical issues without losing sight of their

² Cf. Pope Francis, Encyclical letter *Laudato si'*, 24.

human dimensions, as well as assessing the magnitude of the phenomenon and its consequences, are enormous undertakings.

The potential impact of sea-level rise on maritime delimitations, on baselines, on the jurisdiction and rights of States, on the implementation and application of existing treaties and on the continuing discussions on the Biodiversity Beyond National Jurisdiction [BBNJ] instrument and the International Seabed Authority [ISA] code are complex and evolving legal issues that demand careful study. The Holy See notes with appreciation that discussions are already being held within the Commission, including on such fundamental questions as sea-level rise and the notion of a “fundamental change of circumstances,”³ and looks forward to following the future work of the Commission.

Thank you, Madam Chair.

³ Vienna Convention on the Law of Treaties, art. 62, paragraph 2.