



INDIA
भारत

STATEMENT BY

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ON

**AGENDA ITEM 82
ILC CLUSTER 2**

**CHAPTER VI: *IMMUNITY OF STATE OFFICIALS FROM FOREIGN
CRIMINAL JURISDICTION &
CHAPTER IX: *SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW****

AT THE

**SIXTH COMMITTEE OF THE 76th SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

NEW YORK

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We thank Ms. Concepción Escobar Hernández the Special Rapporteur for the eighth report (A/CN.4/739) on the topic of **Immunity of State officials from foreign criminal jurisdiction**

2. We take note of the report examining relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals; considering a mechanism for the settlement of disputes between the forum State and the State of the official; and the issue of good practices that could help to solve the problems that arise in practice in the process of determining and applying immunity.

3. We reiterate our position that the topic reflects its complexities and the controversial nature of some of its fundamental aspects without the benefit of significant State practice. In that connection, the Commission would need to overcome the divergent views of its members on draft Article 7 before completing its second reading on the topic. The need to consider the question of inviolability and the outstanding definitions in draft article 2 (formerly draft article 3) also needs to be examined in this context.

4. Since the topic is politically sensitive for some states, and therefore diligence, prudence and caution is needed to decide whether the Commission should focus on the codification aspect or progressive development of international law. This would be clear only when the Commission will be able to show consistent State practice and treaty practice to support the exceptions asserted in Draft Article 7. Any system, if not agreed, would be likely to harm inter–state relations and also undermine the very objective of ending impunity of most serious international crimes.

Madam Chair,

5. The status of and nature of duty being performed by persons claiming immunity is a factor of core importance at the time of the commission of offence. There could be a situation where certain persons, though belonging to the category of officials immunity by domestic law of a country for acts done during the course of official duty as state official, may undertake certain contractual assignment other than or in addition to the original state official duty. In such situations, factors such as status of such official at the time of the commission of offence, nature of their functions the gravity of offence, position of international law concerning immunity, victim's interests and totality of circumstances, should be taken into account in determining immunity.

6. In conclusion this delegation wishes to underscore that these provisions should not be viewed as codifying existing international law in any manner.

Now I turn to Chapter IX: pertaining to Sea-Level rise

Madam Chair,

We would like to thank the International Law Commission, and in particular the Study group on Sea-Level Rise in relation to International Law, for their work over the past two years

7. India is aware of the impact of sea-level rise and the immense challenge of understanding complex legal and technical issues associated with sea level rise without losing sight of their human dimension.

8. The Small Island Developing States (SIDS) are facing disproportionate challenges to their social and economic development given their small size, remote location, vulnerability to sea-level rise, high costs for energy and transportation. In effect, it's an existential crisis for them.

9. The territories of SIDS, and the maritime zones allocated under the United Nations Convention on the Law of the Sea (UNCLOS) are central to their statehood, economies, food security, health and education prospects, and even their unique cultures and livelihoods. Therefore, the work of ILC is particularly of importance to SIDS countries, and discussing this issue in other UN bodies, such as UN Security Council, by arbitrarily linking the issue to international peace and security is totally uncalled for.

10. First Issues Paper makes it very clear that 1982 United Nations Law of the Sea Convention ("UNCLOS") is critically important in establishing an effective legal regime for Ocean governance. It, however, does not explicitly deal with the impacts of climate change-related sea-level rise on maritime zones and the rights and entitlements that flow from them. The drafters of UNCLOS did not foresee the challenges posed by this phenomenon for the legal order created under UNCLOS.

11. The second issues paper is due next year on the issues related to statehood and the protection of affected persons due to Sea level rise. We hope deliberations of this meeting will provide valuable input for ongoing efforts of the international community to assist the SIDS to tackle challenges due to sea-level rise. In accordance with the 2018

syllabus, the Study Group will examine the possible legal effects or implications of sea-level rise in three main areas: (a) law of the sea; (b) statehood; and (c) protection of persons affected by sea-level rise. These three issues reflect the legal implications of sea-level rise for the constituent elements of the State (territory, population and Government/statehood) and are thus interconnected and should be examined together.

12. We are of the considered opinion that any possible recommendations could only be considered by the ILC at a later stage, i.e. when both issue papers have been presented and analysed and when the necessary further studies on the relevant sources of law and principles and rules of international law, as well as on state practice and *opinio juris*, have been conducted.

13. It is in light of this general approach that the different legal issues in relation to sea level rise should be considered and discussed by the ILC and the Study Group, and such consideration should be based on both issues papers setting out all the legal issues of law of the sea, statehood and protection of persons.

14. We look forward to further discussions and considerations with due respect for the integrity of the United Nations Convention on the Law of the Sea. Reducing the vulnerability of SIDS and strengthening their resilience to climate change should be a collective responsibility of the international community.

Thank you Madam Chair.