



**United Nations General Assembly | Sixth Committee**  
**Report of the International Law Commission (Cluster II)**  
27 October 2022

Mr. Chair,

Moving to the second cluster of items discussed in the report of the International Law Commission, Brazil would like to deliver some remarks regarding the topics contained in Chapters VI and IX, namely: (i) immunity of State officials from foreign criminal jurisdiction; and (ii) sea-level rise in relation to international law.

Brazil has been following with attention the work of the Commission on the topic of immunity of state officials from foreign criminal jurisdiction. I would like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her contribution on the matter, and commend the Commission for the adoption of the text of the draft articles on first reading.

For Brazil, the immunity of State officials from foreign criminal jurisdiction is important to ensure that they can adequately perform their functions, particularly when they are not protected by the existing multilateral conventions.

Brazil understands that the immunity granted to authorities derives from the basic principle of sovereign equality of States. Immunity contributes to the stability of international relations, as it prevents abuses in the exercise of criminal jurisdiction, which may be used to serve not justice, but other interests. In this regard, a high-level State authority must be protected from the subordination to foreign domestic jurisdictions in relation to his or her official capacity — and not for personal benefit.

At the same time, immunity should not mean impunity. In this sense, it is important to recognize the possibility that the State of nationality may exercise its jurisdiction in some situations. Moreover, in cases of serious crimes, it is also important to highlight rules such as *aut dedere aut iudicare* and the complementary role of the International Criminal Court.

Mr. Chair,

Brazil understands that the substantive and temporal elements in draft Articles 3 and 4, concerning the immunity *ratione personae* of Heads of State, Heads of Government, and Ministers of Foreign Affairs during their respective terms in office, reflect customary international law as recognized in the case-law of the International Court of Justice. Brazil understands that Articles 5 and 6, on immunity *ratione materiae* of State authorities, also reflect customary international law.

Brazil favours the exceptions to the immunity from jurisdiction *ratione materiae* presented in Article 7, which aim to combat impunity for serious international crimes, as incorporated in the treaties listed in the annex to the articles.

Brazil welcomes the safeguards presented in part four of the draft articles, in particular the need for the forum State to assess the immunities of state authorities before initiating any criminal prosecution or adopting any coercive measure.

Another point Brazil would like to make relates to the settlement of disputes. This matter, reflected in draft Article 18(2), still requires further discussion. At this stage, it is not clear whether a dispute resolution clause would be appropriate or desirable in the outcome of the work of the Commission. If included, such a clause should be general in nature, without the use of compulsory language.

Mr. Chair,

I now turn to the topic of "sea-level rise". This is a pressing issue, as Brazil has highlighted in different occasions in the UN General Assembly. As a country with a coast of almost 8,000 km and a coastal population of over 50 million, Brazil considers it important to enhance our understanding of the legal impacts of sea-level rise.

The contribution of the ILC to this topic is an important one, as legal certainty is key in preventing disputes between Member States. Brazil reiterates its position that solutions to the complex problems arising from the topic should be in accordance with United Nations Convention on the Law of the Sea.

This year, we thank the co-chairs on issues related to statehood and to the protection of persons affected by sea-level rise, namely Mr. Juan José Ruda Santolaria and Ms. Patrícia Galvão Teles, for their valuable contribution to this topic in preparing the second issues paper.

On the issue of *statehood*, we take note that there is no record of situations where the territory of a State had been completely submerged or rendered uninhabitable. Resorting to established treaty law is thus certainly useful, such as the 1933 Convention on the Rights and Duties of States. Article 1 of the Montevideo Convention sets out the essential elements of the State and provides a reference for the work of the Commission. While population, territory, government, and capacity to enter into relations with other States are essential to the creation of States, further consideration could be given on whether the observance of these elements is indispensable for the continued existence of a State. The presumption of continuity could be an acceptable starting point for the work of the Commission on this matter.

Brazil believes States should cooperate in good faith and taking into consideration their common but differentiated responsibilities, as enshrined in Principle 7 of the 1992 Rio Declaration on Environment and Development, as the States most affected by sea level rise, especially Small Island Developing States, are not the ones most responsible for climate change.

On the issue of *protection of persons*, it is relevant to explore existing international legal frameworks potentially applicable to the protection of persons affected by sea-level rise. Norms of international human rights law, including the right to a nationality, and of international refugee law, such as the principle of *non-refoulement*, as applicable, might prove useful for the Study Group's examination of the topic.

Brazil looks forward to the future work of the Study Group on the subtopic of the law of the sea, in 2023, and the subtopics of statehood and the protection of persons affected by sea-level rise, in 2024.

I thank you.