



CZECH REPUBLIC

Permanent Mission of the Czech Republic to the United Nations

77th Session of the General Assembly
Sixth Committee

Report of the International Law Commission on the work of its seventy-third session

Cluster II:
Immunity of State officials from foreign criminal jurisdiction
Sea-level rise in relation to international law

Statement by

Mr. Marek Zukal
Legal Adviser

New York, November 1st, 2022

Check against Delivery

One Dag Hammarskjöld Plaza, 48th floor
885 Second Avenue, New York, NY 10017
tel.: +1 (646) 981 4001, fax: +1 (646) 981 4099
www.mzv.cz/un.newyork

Madam/Mr. Chair,

The Czech Republic welcomes the completion of the first reading of the draft articles on “**Immunity of State officials from foreign criminal jurisdiction**” and appreciates the Commission and both the Special Rapporteurs, Ms. Concepción Escobar Hernández and her predecessor Mr. Roman A. Kolodkin, for their work on this topic. The Czech Republic intends to provide its written comments on the draft articles, therefore now it will limit itself to brief general comments on certain aspects of the draft.

The Czech Republic commends the Special Rapporteur and the Commission for the clarification of the definition and scope of the immunity of State officials *ratione personae* and *ratione materiae* contained in Part I, II and III of the draft. In our opinion, these provisions in general reflect current customary international law. As regards the much discussed draft article 7 providing for the exceptions from immunity *ratione materiae*, we already mentioned in our previous statements that we welcome the adoption of this draft article. In our opinion, the draft article in principle properly reflects existing norms of international law and practice based on the absence of immunity *ratione materiae* when crimes under international law, as well as so-called official crimes defined in relevant treaties, are committed. The non-applicability of immunity *ratione materiae* seems to be a consequence of normative incompatibility of such immunity with definitions and obligations under international law and relevant international conventions, some of which are listed in the Annex to the draft articles.

On the other hand, as we already mentioned in our previous statements on this topic, we have doubts concerning the concept and content of Part IV of the draft containing „procedural provisions and safeguards“.

First, we would like to point out that immunity *ratione materiae* applies only when the acts of the foreign official performed in his official capacity become the subject-matter of the proceedings before foreign courts. Thus, in the vast majority of cases, foreign State officials enjoying immunity *ratione materiae* may be fully subject to the criminal jurisdiction of foreign States without any immunity being applicable. This fact does not seem to be taken into account in the procedural draft provisions.

Another issue which, in our opinion, deserves further consideration, is the invocation by a State of the immunity *ratione materiae* of its officials. Such an invocation of immunity *ratione materiae* would mean that the State assumes possible civil liability under foreign national law as well as international responsibility for any wrongful acts committed as a result of the official's conduct. In our view, it would be useful if the Commission could clarify the interrelation among these concepts.

In general, we are of the opinion that the work on the procedural aspects of the immunity of state officials from foreign criminal jurisdiction should be more focused on the relevant practice of States, namely their laws on criminal procedure and decisions of national courts, on treaties regulating international judicial cooperation and mutual legal assistance in criminal matters, and relevant case law of international courts. The Commission could more broadly analyse common elements in the practice of states and

possibly identify non-binding good practices based on the application of existing rules of international law. We already mentioned that we do not expect the Commission to formulate new, additional procedural obligations, and indicated that, from our point of view, the treaty form would *not* be an appropriate outcome of the work on this topic.

Madam/Mr. Chair,

Now I would like to turn to the topic „**Sea-level rise in relation to international law**“. The Czech delegation notes with interest the work of the open-ended Study Group during the seventy-third session of the Commission, which focused on the questions of statehood and the protection of persons affected by sea-level rise. We appreciate the preparation of the second issues paper on the topic¹ by the Co-Chairs, Ms. Galvão Teles and Mr. Ruda Santolaria and take note of the debate within the Study Group as reflected in its Report to the Commission.

We agree with the Co-Chairs' view, that “for low-lying and small island developing States, the threat [posed by the sea level rise] is existential in nature, and in the case of small island developing States, it concerns their very survival.” The response to this threat must be comprehensive. International law aspect is part of this response; however, its various elements are of different weight and urgency.

In this respect, we doubt whether, in addressing issues relating to the statehood, it is needed to delve into academic questions such as the notion and criteria of a State and statehood or to draw inappropriate analogies. The questions of existence, continuity or discontinuity of a State involve high degree of politically sensitive considerations, which must take into account specific situation of each individual case. Therefore, any general conclusions concerning these matters may be of very limited value for the States concerned.

Instead, we would rather encourage the Commission and its Study Group to embark, as a matter of priority, on the second element, namely the protection of persons affected by sea-level rise. Numerous expert reports mentioned in para 6 represent an important source of information on various problems which these States and their population are or may be facing.

In light of the progressive character of the phenomenon of sea level rise, the occurrence of natural disasters affecting coastal and small islands States will become more frequent and their impact increasingly damaging. In this respect, the Study Group might, among other things, consider the question whether the past projects prepared by the Commission, such as the 2016 Draft articles on the protection of persons in the event of disasters, are adequately responding to the needs of assistance to the population of mentioned States.

The spectrum of problems caused by the sea level rise, however, is much broader, as demonstrated in the key findings of the report of the Intergovernmental Panel on Climate Change concerning the impacts, adaptation and vulnerability with respect to climate

¹ A/CN.4/752

change. We concur with the view expressed in paragraph 172 that “the existing international legal frameworks potentially applicable to the protection of persons affected by sea-level rise were fragmented and general in nature, [and] that they could be further developed to address specific needs of affected persons.” This, in our view, represents the main challenge before the Study Group and should be its main task. The guiding questions, spelled out in paragraph 175, which were proposed in order to structure the future work of the Study Group on the topic, represent a good starting point.

In conclusion, we wish to underline once again the need to preserve the integrity of the United Nations Convention on the Law of the Sea. We also wish to reiterate that the State practice based on the Convention is essential to the work of the Study Group on the topic.

I thank you, Madam/Mr. Chair.