



Statement by
Mr. Naser Asiabi Pourimani, Representative of the Islamic Republic of Iran
Before the
Sixth Committee of the
76th Session of the United Nations General Assembly
On Agenda Item 83:

**“Report of the International Law Commission on the work of its seventy-
second session”**

Cluster II

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

Madam Chairperson,

Regarding the topic of “*Immunity of State officials from foreign criminal jurisdiction*”, I would like to thank the Special Rapporteur, Ms. Concepcion Escobar Hernandez, for completing of her considerations on the topic, and I would like to make the following comments and observations:

First and foremost, we once again express our disappointment with the manner in which draft article 7 has been provisionally drafted, and we believe that this Draft Article is still a central issue for the Commission.

We maintain that Draft Article 7 is without prejudice in relation to the immunity *ratione personae*. Immunity of State officials, which derives from immunity of States lasts during their tenure in office. Other officials—and all former officials—enjoy conduct-based immunity, which lasts forever but applies only to acts taken in an official capacity. As the European Court of Human Rights affirmed in the case of Jones v. United Kingdom, which I quote:



“The first question is whether the grant of immunity *ratione materiae* to State officials reflects generally recognized rules of public international law. The Court has previously accepted that the grant of immunity to the State reflects such rules. Since an act cannot be carried out by a State itself but only by individuals acting on the State’s behalf, where immunity can be invoked by the State then the starting-point must be that immunity *ratione materiae* applies to the acts of State officials. If it were otherwise, State immunity could always be circumvented by suing named officials.”

This is the approach that was implicitly accepted by the International Court of Justice in the *Jurisdictional Immunity Case*, the judgment of 3 February 2012 when explaining the issue of the case and denying to differentiate between these two types of immunity.

It has also been bolstered by the ICJ in the *Arrest Warrant* case, of the judgment of 14 February 2002 wherein it implies that the substantial rules of international law cannot overcome procedural rules. Thus, while we admit that immunity does not mean a lack of responsibility, at the same time, we are of the view that limiting the scope of immunity in favor of the responsibility of State officials shall be grounded on coherent State practices.



We also re-emphasize that instead of enlisting specific crimes, such exception is best to be applied solely with regard to the most serious crimes of international concern as there is doubt whether State practice and jurisprudence support the inclusion of crimes, such as torture or enforced disappearance, under the scope of exceptions to the immunity *ratione materie* from foreign criminal jurisdiction. For example, the ECtHR in *Jones v. United Kingdom* effectively concluded that torture is an official act entitled to immunity from civil suits in the courts of other countries.

Second, Draft Article 17 shall be read together with Draft Article 7. We are of the view that under the circumstances in which there are considerable controversies over Draft Article 7 and the statements of States in the Sixth Committee over the course of previous years that are a testimony to this, Draft Article 17 will be applied only as a dispute production machine which will escalate tensions in relations between States.

I would also like to note that the final clauses, including a dispute settlement clause, sense only if the final product will be a treaty. While the Commission had yet to decide on the final product of the topic, it seems the time is not ripe enough to include such a clause in the Draft. Moreover, in light of its relationship with the Sixth Committee, the Commission mostly had avoided inserting such clauses in its final products from the beginning of its work. It is a significant reminder that government views are vital for the Commission's final product completed at its second reading. If it is in the form of draft articles, the Sixth Committee will determine whether they should be negotiated into a treaty either within the Sixth Committee or at a diplomatic conference convened for this purpose.



It is also important to remind that the work on “peremptory norms of general international law (*jus cogens*)”, which was mentioned in the Special Rapporteur’s report, is not completed and could not, therefore, be taken as a precedent. Mr. Tladi, the Special Rapporteur for that topic, did not exclude the possibility that draft conclusion 21 might be reviewed to take account of the reactions of States while noting that the wording “recommended practice” had been used in the original text of the draft conclusion.

Third, regarding the relationship between the immunity in national and international criminal tribunals, we believe that the fact that a person can be prosecuted by an international tribunal cannot affect the immunity of the same person before the Forums of any foreign State. This emanates from the stark difference between the origins of immunity. The latter emanates from the principle of sovereign equality of States, while the first derives from the consent of States to the jurisdiction of the international tribunal. In other words, a “without prejudice” clause for justifying the relation between national courts and international tribunals is of no relevance for the purpose of the current topic which relates only to the manner of application of foreign criminal jurisdiction. Moreover, such a clause has already been mentioned in Draft Article 1(2) in more acceptable and logical wording which can also be construed as a more comprehensive clause. We also doubt whether Draft Article 18 can be applied to the States which are not parties to the statute of International Criminal Tribunals, particularly the Rome Statute of International Criminal Court.



Concerning the proposal of the Special Rapporteur on “recommended good practices”, we are of the view that producing such practices which are based on policy preferences and a lack of concrete measures may lead to unbalanced practices which can disrupt international legal order based on recognized general principles of international law including, but not limited to, non-intervention, international cooperation and sovereign equality of States.

Finally, we once again express our dissent with paragraph 4 of draft article 11 regarding the procedural requirements of the waiver of immunity. We are of the view that the waiver of immunity as a procedural rule is the exclusive right of sovereign States which shall be declared by the State concerned in a manner that manifests the will of that State to waive the immunity of its official. Therefore, the state of the concerned official has an exclusive authority to invoke and waive the immunity of its officials, and the waiver should be not only clear and expressed but also should mention the official whose immunity is being waived. In relation to draft article 11(4), we cannot concur with the Special Rapporteur about a general obligation deducted from a treaty on a substantial matter related to individual responsibility that can be deemed as an express waiver.



Madam Chairperson,

Turning to the topic of “*Sea-level rise in relation to international law*”, we commend the study group for the preparation of their first issue paper which addressed the legal effects of the topic on various maritime issues.

The Islamic Republic of Iran attaches great importance to the law of the sea and related issues, including sea-level rise which might have drastic effects on the international community as a whole during a prolonged period. However, by virtue of the scientific nature of the topic, the exact range of its impacts on the entire planet is yet to be discovered. The facts presented in the issue paper indicate a lack of enough State practices regarding the topic. Hence, we suggest that the commission be cautious about its studies, particularly on the protection of persons affected by sea-level rise in the coming year's study. Regarding the current study, I would like to present the following comments and observations.

We agree with the approach of the paper that the maritime zones designated by States cannot be assimilated into the established territorial boundaries. The coastal States, by determination of their maritime zones, entertain from sovereign rights which are granted through customary international law. Inevitably, sea-level rise might lead to changes in baselines and, consequently, outer limits of maritime zones. Nonetheless, we are of the view that any change in lines shall be based on principles of equity and fairness.



We admit that the practice of land reclamation, coastal fortification and other means to maintain coastal areas, base points, baselines and islands can be considered as an appropriate response to sea-level rise. However, such fortifications will not result in the creation of any new rights for the States. In addition, as also confirmed in several paragraphs of the issue paper, in case of land loss, maritime entitlements may be reduced or completely disappear. As such, we are of the view that in line with paragraph 8, Article 60 of the 1982 Convention on the Law of the Sea, “artificial islands, installations and structures do not possess the status of islands”. Thus, any discussion about the relationship between artificial islands and the change of maritime zones in relation to sea level rise is irrelevant.

Thank you, Madam Chairperson.