PERMANENT MISSION OF THE REPUBLIC OF SIERRA LEONE TO THE UNITED NATIONS

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STATEMENT

by

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at the 76th Session of the United Nations General Assembly

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

Cluster II:

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

New York, 28th October 2021

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Madam Chair,

1. My delegation is pleased to join the debate on the second cluster of topics on the agenda item "Report of the International Law Commission on the work of its seventy-second session", dealing with chapters: VI (Immunity of State officials from foreign criminal jurisdiction) and IX (Sea-level rise in relation to international law).

2. On "**Immunity of State officials from foreign criminal jurisdiction**", Sierra Leone is pleased to note and welcomes the progress made by the Commission in the provisional adoption of six draft articles this session. Even though the Commission did not accomplish a first reading on the topic, we note that this is the most substantive progress the Commission has made in a single session with the adoption of the said six draft articles, to wit, **draft article 8 ante** (application of part 4), **draft article 8** (examination of immunity by the forum State), **draft article 9** (notification of the State of the official), **draft article 10** (invocation of immunity), **draft article 11** (waiver of immunity) and **draft article 12** (requests for information).

3. Sierra Leone accordingly commends the Commission and Special Rapporteur, **Prof. Concepcion Escobar-Hernandez** of Spain, particularly for her extensive work in the submission of her eight substantive report, with proposals for two final draft articles (**draft article 17** on settlement of disputes and **draft article 18** on the relationship with international tribunals), both of which have been referred to the Drafting Committee.

4. We note that the eight report examines the following:

a. the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals;

b. considered a mechanism for the settlement of disputes between the forum State and the State of the official; and

c. considered the issue of good practices that could help to solve the problems that arise in practice in the process of determining and applying immunity.

5. We take note of the delicate and complex nature of the immunities topic, with strong interest from States since it was added to the program of work in 2007. Sierra Leone looks forward to the completion of the first reading of the topic this quinquennium, so that States can comment on the full set of draft articles, since the Special Rapporteur's plan of work on the topic has been completed. We, however, wish in a preliminary nature to make the observation on the significant developments concerning procedural safeguards, in relation to the immunity of State officials. We observe that the objective, in all the draft articles adopted this year, seems to have been to find a balance between the interests of the forum State seeking information and the State of the official.

6. Sierra Leone deems the focus on addressing procedural safeguards, as appropriate. We therefore note with interest the decision on the adoption of **draft Article 8 ante**, providing that the procedural provisions and safeguards

shall be applicable to "any criminal proceedings against a foreign State official, current or former", covering draft articles contained in Part Two and Part Three, covering the determination of whether immunity applies or does not apply; and **draft article 7**.

7. Sierra Leone concludes on the immunities topic by adding our voice to the call for the Commission to find a path, the way forward on the topic. Much like the Sixth Committee in our debates on the products of the Commission, the Commission would need to overcome the divergent views of its members on **draft article 7**, and also consider the question of inviolability and the outstanding definitions in **draft article 2** (formerly draft article 3).

Madam Chair,

8. On "***Sea-level rise in relation to international law***", Sierra Leone welcomes the progress made this session by the Commission. We commend the Commission, the Study Group, and its Co-Chairs, in particularly the two Co-Chairs on issues related to the law of the sea, namely **Mr. Bogdan Aurescu** of Romania and **Prof. Nilüfer Oral** of Turkey, for their extensive work on the first **issues paper** on the topic and the **preliminary bibliography**.

9. We note that the Commission finally had the opportunity to discuss the first issues paper addressing, inter alia:

a. the possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces that are measured from the baselines, including an analysis of

the effects of the ambulation of the baselines as a result of sea-level rise;

b. the possible legal effects of sea-level rise on maritime delimitations, as well as on the issue of whether sea-level rise constituted a fundamental change of circumstances, in accordance with article 62, paragraph 2, of the 1969 Vienna Convention on the Law of Treaties;

c. the possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces measured from the baselines, as well as on maritime delimitations, effected either by agreement or by adjudication, as presented in paragraphs 104 and 141 of the first issues paper;

d. the potential legal consequences of the landward shift of a newly drawn baseline due to sea-level rise, and the impact of sea-level rise on the legal status of islands, rocks and low tide elevations;

e. the possible consequences on the rights and jurisdiction of the coastal State, as well as third party States, in established maritime zones where maritime zones shift because part of the internal waters become territorial sea, part of the territorial sea becomes contiguous zone and/or exclusive economic zone, and part of the exclusive economic zone becomes high seas;

f. the case of an archipelagic State where, due to the inundation of small islands or drying reefs, the existing

archipelagic baselines could be impacted, potentially resulting in the loss of archipelagic baseline status; and

g. the status of islands and rocks under article 121 of the United Nations Convention on the Law of the Sea and the potential significant consequences of being reclassified as a rock due to sea-level rise, possibly becoming a rock that "cannot sustain human habitation or economic life of their own" under article 121, paragraph 3, of the Convention.

10. Sierra Leone notes that the Commission, itself, took note of the joint oral report of the Co-Chairs of the Study Group at its 27 July 2021 meeting.

11. Turning to the preliminary bibliography, and while we make no value determination in welcoming the efforts of the Co-Chairs, we will repeat our general call for inclusivity and full representation of the diverse sources of juristic contributions reflective of the contemporary international law community. It is in this regard that we take note and commend the presentation of Co-Chair **Prof. Yacouba Cisse** of Côte d'Ivoire "*on the practice of African States regarding maritime delimitation*". Whilst agreeing with the view that maritime delimitation is an important issue for costal States, including costal African States, Sierra Leone will study further the presentation as contained in the report (A/76/10), specifically on:

a. The outcome of the survey, stated thus: "while there was some African legislative and constitutional practice on baselines and maritime borders, such practice was diverse. As such, it was not possible to infer the existence

of *opinio juris* in favour of or against permanent or ambulatory baselines or maritime boundaries. There was no generalized African practice since the geography of the coasts varied, such that the justification for the use of baselines, tide (high or low), ambulatory or permanent lines was dependent on the general configuration of the coasts"; and

b. The view of the Co-Chair, and for the reason given therein, that "the application of principles of public international law in the African context could favour fixed baselines or permanent maritime boundaries".

12. In building on this view, Sierra Leone takes this opportunity to recall with interest, the 78th Conference of the International Law Association resolution 5/2018 (adopted in 2018), and the Pacific Islands Forum, "Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise" (6 August 2021), in the context of studies or instruments evidencing the emergency of State practice in line with the Co-Chair's view on fixed baselines or permanent maritime boundaries outside of Africa.

13. We note the divergent views on "the need for stability, security, certainty and predictability, and the need to preserve the balance of rights and obligations between coastal States and other States". We further note with interest that the Study Group welcomed the suggestion that the meaning of "legal stability" although needing further clarification, seems to suggest "the need to preserve the baselines and outer limits of maritime zones",

in the views expressed by Member States in the Sixth Committee.

14. As a general assessment of the Commission's discussion on the first issues paper, Sierra Leone appreciates that the Commission has fully recognize the legitimate concerns expressed by States on sea-level rise, together with the need to approach the topic in full appreciation of its urgency. Undeniably, the topic poses an immense challenge of understanding and seeking solutions to the complex legal and technical issues it raises. With their attendant human dimension, the appreciation of the interest of the Member States by the Commission can only be commended.

15. On the future programme of work, we look forward to the Study Group addressing issues related to statehood and to the protection of persons affected by sea-level rise, under the co-chairpersonship of **Prof. Patrícia Galvão Teles** of Portugal and **Prof. Juan José Ruda Santolaria** of Peru, who will prepare a second issues paper as a basis for the discussion in the Study Group at the 73rd session of the Commission. We note that the Study Group has expressed the intention to finalize a substantive report on the topic by the end of the present quinquennium, consolidating the results of the work undertaken during the 72nd and 73rd sessions of the Commission.

16. In closing, **Madam Chair,** allow me also to reference the views that have been expressed in the Sixth Committee in welcoming the decision of the Commission to place the topic "**Subsidiary means for the determination of rules of international law**", on its long-term programme of work in

the Cluster I debate. With this being a classic topic for the Commission that would continue its known contributions clarifying the sources of international law, we can echo the call for to its inclusion in the current program of work of the Commission as soon as possible.

I thank you.