



UNITED STATES MISSION TO THE UNITED NATIONS

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**Statement of the United States of America
76th Session of the General Assembly Sixth Committee
Agenda Item 82: Report of the International Law Commission
on the Work of its Seventy-Second Session
Cluster Two
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United States Department of State
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Thank you, Madam Chair.

With respect to the topic of “sea-level rise in relation to international law,” the United States appreciates the Commission’s efforts with respect to issues related to the law of the sea. The issues under consideration are complex, and we recognize the Study Group’s laudable efforts to find reliable solutions. The United States recognizes that rising sea levels are a very real threat and is committed to working with others to promote our common goal of protecting maritime zones from challenge and doing so in a manner that we can all support as consistent with international law.

The United States also notes that the Study Group intends to explore a range of additional sources of law on the matter of baselines and maritime zones. In this regard, we would emphasize the universal and unified character of the UN Convention on the Law of the Sea. For example, under existing international law, as reflected in the Convention, coastal baselines are generally ambulatory, meaning that if the low-water line along the coast shifts (either landward or seaward), such shifts may impact the outer limits of the coastal State’s maritime zones. We query whether other sources of law identified by the Study Group could override or alter such universally accepted provisions reflected in the Convention.

The United States notes that it remains supportive of efforts by states to delineate and publish their baselines and the limits of their maritime zones in accordance with international law as reflected in the Law of the Sea Convention. Such a practice provides useful context and clarifies the maritime claims of states, including in relation to future sea-level rise. We appreciate the Commission’s attention to these issues, and we welcome further discussions on steps that can be taken to protect states’ interests, in accordance with international law, in the context of sea level rise.

I turn now to the topic “Immunity of State Officials from Foreign Criminal Jurisdiction.” We note our appreciation for the efforts of Special Rapporteur, Concepcion Escobar Hernandez, on this challenging topic. We welcome also the thoughtful contributions by other members of the Commission.

The United States reiterates the concerns detailed in its prior statements in this Committee. In particular, we do not agree that Draft Article 7 is supported by consistent State practice and *opinio juris* and, as a result, we do not believe that it reflects customary international law. We also reiterate our view that the Commission should work by consensus on this difficult topic given the serious issues it implicates and the importance of state practice in this sensitive area.

In addition, the prior reports on procedural aspects of immunity reflected significant methodological challenges. There is generally very little visibility into criminal investigations that do not result in prosecutions brought by national authorities (either due to immunity or for other reasons), and case law in this area is sparse. The reports therefore detail proposals for certain procedures without the benefit of significant State practice. With several of the provisions now having been adopted as draft articles despite the concerns we and others have articulated, the United States wishes to underscore that these provisions should not be viewed as codifying existing international law, but instead would at best be viewed as proposals for the development of law. We would urge that the commentary reflect this.

Finally, we note with concern that the Eighth Report addresses the immunities of State representatives before international criminal tribunals, even while recognizing such issues are clearly beyond the mandate of the ILC’s project on immunities of State officials before foreign criminal jurisdictions.

Thank you, Madam Chair.