PERMANENT MISSION OF GREECE TO THE UNITED NATIONS
866 SECOND AVENUE · NEW YORK, NY 10017-2905
Tel: 212-888-6900 Fax: 212-888-4440
e-mail: grdel.un@mfa.gr

www.mfa.gr/un

76TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 82

Report of the International Law Commission
on the work of its seventy-second session
Cluster II

Chapter VI: Immunity of State Officials from Foreign Criminal Jurisdiction
Chapter IX: Sea-level Rise in relation to International Law

Statement by
Jenny Stavridi
Head of Section of Public International Law of the Legal Department of the Ministry of Foreign Affairs of Greece
delivered by
Michael Stellakatos Loverdos
Legal Counsellor, Mission of Greece to the United Nations

NEW YORK
October 2021

Check against delivery

Chapter VI: Immunity of State Officials from Foreign Criminal Jurisdiction

Madam Chair,

Let me at the outset commend the Special Rapporteur for the clear and concise eighth Report with which she has concluded the examination of the topic as well as for her dedication and all her efforts that enabled the Commission to make this year considerable progress on the topic with the provisional adoption of 6 new Draft Articles on the procedural aspects of immunity. We hope that the Commission will be able to overcome the differences of views on this sensitive issue and complete in a spirit of collegiality the first reading of the Draft Articles during the quinquennium.

Madam Chair,

Having in mind that, as mentioned in the Commentaries, some of the provisionally adopted Draft Articles are subject to further review by the Commission before the first reading, in order to ensure that the use of certain key terms are consistent and systematic throughout the whole set of the Draft Articles, we would like, at this stage, to state the following:

With regard to Draft Article 8, we wonder whether the phrases “may be affected by the exercise of its criminal jurisdiction” and “may affect an official of another State” in paragraph 1 and 2 thereof are too broad and general and we would like to invite the Commission to consider whether these phrases could be supplemented with further qualifications in order to clearly delimit their scope.

Regarding Draft Article 9, we welcome the alignment of the temporal standard for notifying the State of the official with the one stipulated in subparagraphs (a) and (b) of paragraph 2 of Draft Article 8. However, here again we share the concerns expressed within the Drafting Committee that the phrase “that may affect an official of another State» is too broad and could have unintended effects on the forum State’s exercise of criminal jurisdiction. With regard to paragraph 2 of this Article, we are not sure that the purpose of this paragraph, which to our understanding is to provide for a minimum

threshold of information to be included in the notification, is served with the adverb "inter alia". Finally, concerning paragraph 3 of the same Draft Article, we welcome the fact that after its reformulation by the Commission the diplomatic channels are mentioned first and the "applicable international cooperation and mutual legal assistance treaties" are only included as a subcategory of "other means of communication accepted for that purpose by the State concerned". Indeed, taking into account the specific content and way of operation of these treaties, we share the concerns expressed within the Commission as reflected in the relevant Commentary, since it is still not clear to us how such treaties can be used for the purposes of this Draft Article. In this respect, further explanations -and if possible concrete examples- by the Commission in the Commentary of this Draft Article would be particularly useful.

With respect to paragraph 5 of Draft Article 11 providing for the irrevocability of the waiver of immunity, we tend to agree with those members of the Commission who doubted the usefulness and desirability of this provision, since the relevant treaties adopted so far do not expressly refer to this issue and State practice is limited.

Madam Chair,

Turning now to the Draft Articles 17 and 18 which were proposed by the Special Rapporteur in her eighth report and referred to the Drafting Committee, we would like to note the following:

In our statement in 2018 we have expressed doubts as to the advisability of examining the effect that the duty to cooperate with an international criminal tribunal may have on the immunity of State officials from foreign criminal jurisdiction, not only because such an exercise would go beyond the scope of the present Draft Articles as defined in Draft Article 1, but also in view of the diversity of existing international criminal tribunals and the fact that the relevant duty of States and the procedural treatment of these cases are mainly governed by the statutes of those tribunals. Taking into account this year's debate within the Commission and the concerns expressed by some members about the inclusion of a "without prejudice" clause as proposed in Draft Article 18, we hope that the Commission will be able to propose a wording on the relationship between the present Draft Articles and the norms governing international criminal tribunals – preferably as a new paragraph 3 of Draft Article 1- which would highlight the autonomy

of the respective legal regimes without implying a hierarchical relationship between them.

Regarding, finally, Draft Article 17 on disputes settlement, we share the view of some Commission members that the intended purpose of this provision is critical in order to decide about its inclusion in the Draft Articles and its proper formulation. In this respect, we understand that the intention of the Special Rapporteur was to propose an additional procedural safeguard complementing the procedural guarantees contained in Part Four which would enable States to resolve a controversy arising in the process of determination of immunity at an early stage, avoiding thus a fait accompli, and not a mechanism of last resort for identifying and restoring ex post facto international legality. If this is the case, we believe that this article should be formulated as a general recommendation to States to try to resolve any differences of view regarding the determination and application of immunity at an early stage, using, at their discretion, the means for dispute settlement set forth in Article 33 of the UN Charter.

Chapter IX: Sea-level Rise in relation to International Law

Madam Chair,

Turning to the topic of Sea-level Rise, I would like first of all to thank the ILC for its Report as well as the Co-chairs for this first issues paper on the subject.

Greece would like to make at this stage some general remarks of a preliminary nature on this first issues paper and intends to come back with more comments as the Commission's study on this issue evolves.

As is well known, the UNCLOS possesses a universal and unified character, and in this context sets out the legal framework within which all activities in the oceans and seas must be carried out. Therefore, the Convention sets the legal basis for settling and regulating any relevant issue which may arise. With respect to the topic of sea-level rise, the UNCLOS provides the answers to the questions raised, within their proper context. The Convention promotes stability of law as well as maintenance of international peace and security and aims at preserving legal certainty in all matters, including those of maritime entitlements and maritime boundaries. Thus, predictability, stability and certainty, which are inherent to the Convention and guide its application,

require the preservation of baselines and of the outer limits of maritime zones, as well as of maritime entitlements deriving there from, in accordance with the UNCLOS. Consequently, generalized interpretations that could lead to unpredictable and uncertain situations should be avoided.

As rightly observed, the Convention imposes no obligation of reviewing or recalculating baselines or the outer limits of maritime zones established in accordance with its provisions. At this point, Greece underlines the importance of safeguarding the stability of maritime boundaries, confirmed by state practice and international jurisprudence. In its recent judgment in the case of maritime delimitation between Somalia and Kenya, the International Court of Justice "observes that boundaries between States, including maritime boundaries, are aimed at providing permanency and stability" (*Maritime Delimitation in the Indian Ocean, Somalia v. Kenya*, 12 October 2021, p. 57, par. 158). For this reason, in accordance also with earlier jurisprudence, maritime boundary agreements are subject to the rule excluding boundary agreements from fundamental change of circumstances and, consequently, sea-level rise does not affect maritime boundaries.

Madam Chair,

Greece would like to underline once again that such sensitive questions should be dealt with caution within the International Law Commission, as they touch upon a carefully balanced legal regime for activities at sea, whose integrity needs to be always maintained. The risk of embarking upon questions (e.g. the study of various sources, and of principles and rules of international law) which have little or no relevance with the topic and also distract from addressing and placing the question within its only natural framework (the UNCLOS), should be avoided. At this point it should be recalled that our previous reservations about this topic were mainly due to our concern that the present study might ignore the complexity of the established rules and delicate balances already achieved in the UNCLOS which is one of the fundamental pillars of international legal order.

Finally, as regards the anticipated format of future discussions on the issue, Greece would appreciate further concrete proposals from the Commission for consideration on behalf of the countries.

Thank you Madam Chair.