



INDIA
भारत

STATEMENT BY

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ON

AGENDA ITEM 77
CLUSTER II

**“REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF
ITS SEVENTY THIRD SESSION”**
**CHAPTER VI: IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL
JURISDICTION AND**
CHAPTER IX: SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW

AT THE

**SIXTH COMMITTEE OF THE 77th SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

NEW YORK

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Mr. Chairman,

We thank the Chairman of the International Law Commission for the presentation of his report concerning the second cluster of topics.

We appreciate the detailed reports on the topic “Immunity of state officials from foreign criminal jurisdiction”, submitted from time to time by Special Rapporteur - Ms. Concepcion Escobar Hernandez. We would also like to thank Mr. Roman A. Kolodkin, the first Special Rapporteur for his initial reports on the topic submitted to the Commission.

We appreciate the work of the Commission accomplished at its seventy-third session and as detailed in document A/77/10 particularly Chapter VI thereof, which deals with the topic. We encourage the efforts of the Commission which, while drafting and debating these draft articles, aimed at promoting trust, mutual understanding and cooperation based on good faith between the forum State and the State of the official and offering safeguards against possible abuses and politicization in the exercise of criminal jurisdiction over an official of another State.

Mr. Chairman,

We acknowledge the need to guarantee respect for the principle of the sovereign equality of States, which is the foundation of immunity of State officials from foreign criminal jurisdiction – so much so the immunity belongs to the State and for the official acts performed/done in exercise of State authority. This topic holds great significance as it is directly related to the performance abroad of the officials of a State. The topic is complex and politically sensitive. Consideration of this topic requires a balanced approach taking into account the existing laws and practices on the related issues.

In this regard, we feel that it would be highly desirable to have an in-depth examination of the judgment of the ICJ in the case of Jurisdictional Immunities of the States which inter-alia identified state practices in respect of immunities before National jurisdictions. It goes without saying that the ICJ has affirmed that immunities accorded to State officials are not granted for their personal benefit, but to protect the rights and interests of the State.

The status of and the nature of duty being performed by persons claiming immunity is a factor of core importance at the time of the commission of offence. There could be a situation where persons may undertake certain contractual assignment other than or in addition to their State official duty. In such situations, factors such as status of such officials at the time of the commission of offence, nature of their functions, the gravity of offence, position

of international law concerning immunity, victims' interests, and the totality of circumstances, should be taken into account in determining immunity.

Mr. Chairman,

Looking at the sensitive nature of some of the provisions, especially draft article 7, we take note of the comments submitted by various States on that draft article earlier. We also closely follow the debates and discussions in this forum as well as before the ILC. We find divergent observations of the Member States and other stakeholders on draft article 7 –which seeks to provide that the immunity rationemateriaewould not be applicable to the State officials in respect of crimes under international law, which are made with reference to certain international conventions, including the Rome Statute of the ICC in the Annex.

It may be recalled that the Commission had provisionally adopted draft article 7 and the related annex, by recorded vote during its sixty-ninth session in 2017; however, in its seventy-third session this year, the same has been adopted without taking a vote. We note that some ILC members had voted against the draft article 7 in 2017. Therefore, we consider it ideal that in the process of final adoption of this article, the views of all members of the Commission be taken into account in an attempt to achieve consensus.

In this context, we would like to reaffirm our views expressed earlier in our statement at the Sixth Committee's 76th Session of the United Nations General Assembly concerning the possible approach of the Commission towards finding a solution to reconcile the divergent views of its members and other stakeholders on draft Article 7 in its second reading on the topic

We are of the firm belief that any system, if not agreed, would likely harm inter–state relations and also undermine the very objective of ending impunity of most serious international crimes. At the same time we reiterate that the provisions under this area should not be viewed as codifying existing international law in any manner.

We prefer the examination of subject or issues of immunity on its own without linking them to or with reference to the Rome Statute of the International Criminal Court, to which several countries are not party.

Mr. Chairman,

Turning to Chapter IX pertaining to Sea-Level rise, we would like to thank the Commission, and in particular the Study group on Sea-Level Rise, for its work over the past three years.

We conform to the view regarding the topic's relevance for States that are directly affected by sea-level rise including for those States whose survival might be threatened. We are aware of the impact of sea-level rise and the immense challenge of understanding the associated complex legal and technical issues without losing sight of their human dimension.

Though the 1982 United Nations Convention on the Law of the Sea (UNCLOS) establishes an effective legal regime for Ocean governance, it does not explicitly deal with the impacts of climate change-related sea-level rise on maritime zones and the rights and entitlements that flow from them. The challenges posed by this phenomenon for the legal order created under UNCLOS, could not be foreseen by the drafters of UNCLOS.

As on date, the Small Island Developing States (SIDS) are facing disproportionate challenges to their social and economic development given their small size, remote location, vulnerability to sea-level rise, high costs for energy and transportation. It is an existential crisis for them.

The territories of SIDS, and the maritime zones allocated under the United Nations Convention on the Law of the Sea (UNCLOS) are central to their statehood, economies, food security, health and education prospects, and even their unique cultures and livelihoods. Therefore, the work of Commission is particularly of importance to such countries.

We are of the view that any possible recommendations in this regard should be considered by the Commission only after in-depth study on the relevant principles, sources and rules of International law as well as on State practice and opinio-juris.

We look forward to further discussions and considerations with due respect for the integrity of the United Nations Convention on the Law of the Sea. Reducing the vulnerability of SIDS and strengthening their resilience to climate change should be a collective responsibility of the international community.

Mr. Chairman,

Before concluding, let me reaffirm that the atmosphere we live in is a common resource which all states have a duty to protect for present and future generation, which is even more significant for the developing, less developed and especially the island states that face the risk due to continuing sea-level rise.

I Thank you Mr. Chairman.