



Permanent Mission of Iceland  
to the United Nations

Statement by Director General for Legal and Executive Affairs, Anna Jóhannsdóttir  
on behalf of Denmark, Finland, Iceland, Norway and Sweden

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Report of the International Law Commission on the work of its  
73<sup>rd</sup> session, Cluster 2: Immunity of State officials from foreign  
criminal jurisdiction & Sea-level rise in relation to international law

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Mme./Mr. Chair,

I have the honour to deliver this statement on behalf of Denmark, Finland, Norway,  
Sweden - and my own country - Iceland.

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## **VI – Immunity of State officials from foreign criminal jurisdiction**

Mme./Mr. Chair,

I will now turn to Chapter VI of the ILC report, concerning Immunity of State officials  
from foreign criminal jurisdiction.

Let me start by expressing deep appreciation for the efforts of the Commission on this salient topic. I commend the enduring efforts on this legally complex and politically sensitive matter and truly congratulate the Commission on reaching the milestone of adopting on first reading the entire set of draft articles on immunity of State officials from foreign criminal jurisdiction and the attached commentaries.

I would also like to commend the outstanding contribution of the Special Rapporteur, Ms. Concepción Escobar Hernández, and also the valuable contributions of the previous Special Rapporteur, Mr. Roman A. Kolodkin, which has enabled the Commission to bring to a successful conclusion its first reading of the draft articles.

Having the entire set of draft articles before us, it is the view of the Nordic countries that the Commission has succeeded in striking the balance between the interests of the forum State and the State of the official. In this regard, the procedural provisions of part four of the draft articles are particularly important, considering that they are ensuring adequate safeguards for the State of the official, while also observing the interests of the forum State. Here, we also commend the Commission for the provisionally adopting the draft articles 14 to 18 of part four, which had not been provisionally adopted in the previous sessions.

The Nordic countries would like to take this opportunity to reiterate our support for draft article 7 as provisionally adopted previously and recall our commitment to the Rome Statute of the International Criminal Court and the other treaties enumerated in the annex to the present draft articles, underlining the importance of harmonizing the draft articles with said treaties.

Regarding draft article 7, I would also like to express the Nordic countries' support for article 14, paragraph 3, as this paragraph establishes specific safeguards for the State of the official when the forum State is considering prosecution for one of the crimes enumerated in draft article 7. The purpose of paragraph 3 is to balance the interests of the States

concerned, reducing the potential for political abuse of draft article 7 without overly inhibiting its application in good faith, and the Nordic countries find that the wording of the paragraph succeeds in fulfilling this purpose. The Nordic countries also agree with the considerations mentioned in the Statement of the Chairperson of the Drafting Committee that procedures specific to draft article 7 are necessary, and that procedures proposed will provide effective safeguards against political abuse of draft article 7.

Now turning to the draft articles 17 on consultations and 18 on settlement of disputes, the Nordic countries agree with the drafting committee that these two provisions provide a final procedural safeguard. We therefore support their inclusion. The Nordic countries also support the wording of these articles, and in particular paragraph 2 of article 18. We align ourselves with the views and justifications related to this paragraph set out in the Statement of the Chairperson of the Drafting Committee on page 32. However, the nature of these two draft articles is different from the other draft articles of part four concerning procedural provisions, and the two articles could merit a separate part five along with other final provisions that are standard in international conventions.

This brings me to the issue of what should be the final form of the Commission's work on this topic. The Commission has informed that it has sought to deliver a product that can form the basis for negotiations of a treaty. The Nordic countries agree that the final draft articles could indeed constitute the basis for negotiating a treaty on the subject, although we are cognizant that most of the proposed draft articles reflect customary international law and are as such already binding on states without treaty codification. We look forward to hearing the views of other States on this particular issue.

The Nordic countries once again congratulate the Commission for the successful conclusion of its first reading of the draft articles and look forward to the continued work of the ILC on this important topic.

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## **IX – Sea-level rise in relation to international law**

Mme./Mr. Chair,

I will now turn to the topic of “Sea-level rise in international law”. We would like to thank the Study Group on sea-level rise in relation to international law for its work so far and for the second issues paper relating to statehood and to the protection of persons affected by sea-level rise, prepared by two of the Co-Chairs of the Study Group, Ms. Patricia Galvão Teles and Mr. Juan José Ruda Santolaria.

The Nordic countries remain supportive of the Commission’s work on this timely topic, which comes down to the very existence of States. At the center of this topic are changes in the material world reminiscent of science fiction, but which are indeed cold, harsh facts. Needless to say, the Commission is right in building its work on well-known, scientific facts, such as those established by the Intergovernmental Panel on Climate Change.

The IPCC warned this year that the world is set to reach the 1.5°C level of warming within the next two decades, and that only the most drastic cuts in carbon emissions from now on would help prevent an environmental disaster.

Small island developing States, that are home to around 65 million people, are particularly vulnerable to the consequences of sea level rise. Furthermore, low-lying coastal zones are currently home to almost 700 million people; a number projected to reach more than one billion by 2050; and these zones will suffer a significant increase in sea-level rise related risks such as erosion, flooding and salinisation. According to the IPCC, increases in tropical cyclone winds and rainfall as well as increases in extreme waves, combined with sea-level rise; will exacerbate extreme sea-level events and coastal hazards.

The Nordic countries want to stress that these developments are a matter of concern to all States and certainly not only to those who will suffer the most from the consequences - and which, in many cases, have done the least to cause them.

Mme./Mr. Chair,

The two sub-topics covered in the report this year; questions on statehood on one hand and questions on the protection of persons affected by sea-level rise, on the other hand, are both relevant and should be explored further by the ILC.

Turning to questions of statehood, the Nordic countries agree with the Commission that these are sensitive matters that should be addressed with considerable caution and discussed thoroughly.

As has been discussed within the Commission, it is possible that only a relatively small number of small states would become submerged or uninhabitable due to sea level rise. But let there be no doubt; all States are equally important, regardless of the size of their territory or population. An existential threat to one State needs to be considered as a threat to the international community as a whole.

The ILC report this year touches upon possible alternatives for the future in relation to statehood. This is a sombering, yet a necessary discussion. As Co-Chair Ruda Santolaria has aptly pointed out; while there is yet no record of situations where the territory of a State has been completely submerged or rendered uninhabitable; such a situation cannot be considered a distant theoretical concern. According to the IPCC, sea levels are sure to keep rising well beyond 2100; although the magnitude and rate will depend on how fast emissions will be reduced.

The situation is in many ways unprecedented from the point of view of international law. State practice is essential to all work of the ILC; however, in its absence for large parts of the world – and with a clear distinction between legal and policy aspects – the Commission can be of help to the international community by reflecting on the basis of international

law and generating a dialogue on the possible options and alternatives for States to consider in dealing with the problems associated with sea-level rise.

In this context, and despite that law of the sea aspects are addressed separately from the two sub-topics currently under discussion, we would like to reiterate our long-standing position on the need to fully preserve the integrity of the United Nations Convention on the Law of the Sea.

Mme./Mr. Chair.

The Co-chair has noted that once a State is created under international law, it has an unalienable right to take measures to remain a State. The assumption is mainly based on the 1933 Montevideo Convention on the Rights and Duties of States, with its qualifications for what constitutes a state; namely a permanent population; a defined territory; government; and capacity to enter into relations with other states. Furthermore, the assumption is supported by examples from some regional legal instruments. This assumption is fundamental to the issue at hand, and while it can be agreed to in principle, it would be helpful if the ILC could explore and scrutinize it further.

The same applies to the presumption of continuity of statehood, such as in the absence of a territory. In this context, the discussion on the capacity of such a State to uphold its obligations is relevant – such as on human rights, migration and refugee law as well as in relation to its maritime zones.

Mme./Mr. Chair,

I will now turn to the protection of persons affected by sea-level rise. The Nordic countries have certainly paid attention to the notion of Co-chair Galvão Teles that potentially applicable existing legal frameworks are fragmented and general in nature and that therefore they could be further developed. While it is too early to come to conclusions on whether a specific legal framework will be needed, we think it would be useful if the Commission dwelled further on this issue.

We are pleased that the Co-Chair intends to follow emerging and existing practice closely and establish and maintain contacts with a range of relevant expert bodies and international organizations.

Mme./Mr. Chair.

Among the points the Co-chair has listed for further examination are issues of the utmost importance, such as the protection of persons in vulnerable situations and the prevention of statelessness.

As regards the applicability of human rights law in general to this topic, it is clear that some international human rights are inalienable. Furthermore, as laid out by the World Conference on Human Rights in Vienna in 1993; it is important to remember that all human rights – civil, political, economic, social and cultural; are universal, interrelated, interdependent and indivisible. This may, for instance, apply to cultural rights of persons in scenarios where a state may become inundated or uninhabitable.

The question of human rights of persons affected by sea level rise, to the point that their state becomes inundated or uninhabitable, is important and requires thorough consideration from the perspective of international law.

Mme./Mr. Chair.

Sea-level rise is a human made problem; to which humans can - and must - find solutions. International law is no exception thereto, in instances where there are potential legal gaps. The ILC is well positioned to assist States in clarifying and systematizing international law relating to sea-level rise; as well as in identifying needs for new regulations that States may address in responding to the multitude of problems caused by sea-level rise. In this context it remains important to be mindful of making a distinction between the legal and political aspects of addressing climate change. The Nordics are committed to urgent climate action

and simultaneously, engaging in a structured legal discussion. We look forward to engaging further with the International Law Commission on this important topic.