



PERMANENT MISSION OF  
ARMENIA  
TO THE UNITED NATIONS

**UNGA 77<sup>th</sup> Session**

**Sixth Committee**

Agenda Item 79 “**Report of the International Law Commission on the work of its seventy-third session: Cluster II**”

**Statement by the Delegation of Armenia**

28 October 2022

Mr. Chair,

Armenia supports the continued work of the International Law Commission on its project entitled ‘Immunity of State officials from foreign criminal jurisdiction’. This is an important and practical topic and we commend the approach of the Special Rapporteur in openly setting out her deductive approach from State practice towards progressive development.<sup>1</sup> We consider this project to be an example of the benefit that results from time spent by the Commission (fifteen years to date) to work on an important topic in a deliberate manner. We also consider it to be a valuable topic due to the product being well-suited to the traditional format of ‘draft articles with commentaries’.

We emphasise the importance of avoiding potential conflicts of obligations.<sup>2</sup> This pertains not only to substantive drafting but also to dispute settlement.<sup>3</sup> In this regard, we commend draft Article 18 to provide means to resolve potential conflicts of jurisdiction.

We support the retention of draft Article 7 concerning crimes of international law in which immunity *ratione materiae* will not apply with respect to genocide, crimes against humanity, war crimes, apartheid, torture and enforced disappearance. We note the listing of treaties annexed to clarify the scope of these crimes.<sup>4</sup> Concerning draft Article 4, paragraph 2, one may question whether immunity *ratione personae* ‘covers all acts performed, whether in a private

<sup>1</sup> A/74/10, p.318 (para. 149).

<sup>2</sup> Ibid., p.318 (para. 147); A/CN.4/729, pp.6 (para. 10), 8 (para. 15), 9-10 (para. 17).

<sup>3</sup> The dispute settlement mechanism in Article 119 of the Rome Statute has arguably proven to be ineffective to deal with situations that have arisen since the creation of the ICC in which a State Party of the Rome Statute considers that the ICC has exceeded its authority with respect to its interpretation of the Rome Statute. A proposal to amend Article 119 to permit two or more States to submit a dispute concerning interpretation or application of the Statute to the ICJ, instead of the referral by the Assembly of States Parties, might be a more effective means of resolving such problems.

<sup>4</sup> Ibid., p.319 (para. 151); A/CN.4/729, p.7 (para. 12).

or official capacity, by Heads of State, Heads of Government and Ministers for Foreign Affairs during or *prior to* their term of office'.<sup>5</sup>

It will be important to give due consideration to the future action on the draft Articles after they have been adopted by the Commission at second reading.

Mr Chair,

We welcome the decision of the Commission to continue its work on the topic 'sea level rise' through an open-ended Study Group. This is an important topic in contemporary international relations, which will only become more so, as the effects of climate change continue. The list of topics identified by the Study Group, such as the protection of displaced persons and the preservation of legal rights of States affected by sea level rise,<sup>6</sup> are already beginning to emerge as submergence of land happens. We consider the engagement of Members of the Commission with the work of learned societies in this area, notably the Committee on Sea Level Rise of the International Law Association, to be valuable.

It is important to take account of pertinent State practice that might be applied by analogy to the issues to be examined by the Study Group. This may well include questions of statehood, as well as those related to the preservation of maritime rights. We note that sea level rise occurring in response to climate change is a novel phenomenon without precedent. Accordingly, we see merit in engaging with progressive development in this area due to the likelihood that State practice, even by analogy, will not deal with all of the issues in this unique area.

Concerning the scope of the work and the potential products, we recommend that the Commission take a decision in the near future to enable it to effectively plan and structure its work. For certain aspects of the project, such as Statehood and the protection of displaced persons, a report might be the best medium through which to communicate its findings, as was done for the 'Fragmentation of International Law' project.<sup>7</sup> In this regard, we note that it might be that other questions, such as maritime entitlements, would be suitable to more tangible proposals for legal reform, which requires careful consideration as to the way forward.

Finally, we note the proposal to establish an 'ILC Special Rapporteur Trust Fund' set out in Annex II of the Report, which could play an important role in mobilizing contributions from both public and private bodies.

I thank you, Mr. Chair.

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<sup>5</sup> A/CN.4/729, p.69 (Annex I)(emphasis added). See, e.g. – *Arrest Warrant of 11 April 2000 Case (Democratic Republic of the Congo v. Belgium (Judgment))* [2002] ICJ Rep. 3, 19-20 (para. 47), 22 (paras 54-55).

<sup>6</sup> Concerning the effect of sea level rise on maritime boundaries, see, e.g. – Árnadóttir, *Climate Change and Maritime Boundaries: Legal Consequences of Sea Level Rise* (Cambridge University Press, 2022).

<sup>7</sup> A/CN.4/L.682.