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**Report of the International Law Commission**

**Agenda item 77**

**“ILC Cluster II”**

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**NEW YORK, 28 October 2022**

## Cluster II

### Chapter VI (Immunity of State officials from foreign criminal jurisdiction)

[Mme/Mr Chair], turning to the topic of Immunity of State officials from foreign criminal jurisdiction, the Kingdom of the Netherlands has noted the adoption, on first reading, of the draft articles. Over the years, the Netherlands has provided its views on the work of the Commission on this topic, and the resulting draft articles. We have voiced our concerns with the development of this topic repeatedly, in particular in view of the absence of State practice and *opinio juris* and of the conceptual underpinnings of the project. We regret to note that the draft articles as presently adopted on first reading continue to give rise to these concerns.

The Kingdom of the Netherlands would like to inform the Commission that it will request its Advisory Committee on Issues of Public International Law to provide the government with an independent advice on the draft articles now adopted on first reading. For these purposes, they will be forwarded to this Advisory Committee.

My government will take the advice into account while preparing its written comments and observations on the topic of immunity of State officials from foreign criminal jurisdiction in to be submitted before December 2023.

## **Chapter IX (Sea-level rise in relation to international law)**

The Netherlands welcomes the report of the International Law Commission on the topic “Sea-level rise in relation to international law” and wishes to extend its congratulations to the two Co-Chairs of the Study Group, for the work on this topic.

The issue of sea-level rise is of particular importance to the Kingdom of the Netherlands, as it has consequences for all parts of our Kingdom. Some parts of the Caribbean islands of the Kingdom of the Netherlands are not far above the current sea level and may lose a significant amount of land territory as a result of further sea level rise. In the European part of the Kingdom, 26 percent of the land territory currently lies below sea level. This percentage is likely to increase as the sea level rises.

As to the question of sea-level rise in relation to statehood, my Government wishes to make the following remarks.

My Government underscores the relevance of the topic and the crucial importance of the Commission's discussion for States that are directly affected by sea-level rise, and in particular for small island developing States that could be at risk of losing their statehood as a result of sea-level rise.

According to my Government the criteria for statehood contained in the 1933 Convention on the Rights and Duties of States are the point of departure for the discussion on statehood and sea-level rise.

These criteria are concerned with the creation and existence of a State as an international legal person and constitute a general legal framework for questions of the continuity of statehood.

However, State practice shows that these criteria are not applied in the same manner to cases of the creation of States and cases of the continuity or extinction of States. This State practice demonstrates the existence of a strong presumption in favor of the continuity of statehood, even in cases in which one or more criteria are no longer met.

In this regard, the Second Issues Paper prepared by the two Co-Chairs makes reference to, for instance, situations of foreign occupation and governments-in-exile, with respect to which the international community presumed the continuity of the legal personality of the States concerned.

These cases have in common that the non-fulfillment of one or more criteria for statehood is considered by the international community to be of a temporary nature. The loss of land by a State as a result of sea-level rise can, most probably, not be considered to be temporary. Yet, in the view of my Government, these precedents are relevant, because they demonstrate international law's capacity to deal with prolonged situations in which one or more criteria for statehood are not met. They demonstrate that the non-fulfillment of one or more of these criteria does not automatically lead to a State's extinction as an international legal person. In the same line, *a priori*, there is no reason why a State which loses its territory because of sea-level rise would automatically lose statehood as a result.

Therefore, my Government would recommend a further study into the differences in interpretation and application of the criteria for statehood in regard of, on the one hand, the creation of States and, on the other, the continuity and extinction of statehood. This particular aspect is not covered by the Second Issues Paper. In regard of the continuity of statehood, particular attention could be paid to the possible relevance of specific rules and principles of international law. These include the right of self-determination of peoples, in addition to the presumption of temporality of the situation.

[Mme/Mr] Chair, my Government would support further discussion of international law on the question of sea-level rise in relation to the protection of persons. A rising sea level may not only impact a State itself, but also those living on lands belonging to States. Recent jurisprudence of the UN Human Rights Committee has shown the impact of a rising sea on the effective enjoyment of human rights. The Netherlands therefore welcomes the proposals made by the Co-Chairs to further study the issues as mentioned in the report. The Netherlands particularly welcomes the issues as presented in the second issues paper and the report of the Study Group, especially concerning obligations under international human rights law, the obligation of *non-refoulement*, and the concept of international cooperation.

My Government welcomes the comment of the Study Group on the recognition of the right to a clean, healthy and sustainable environment by the Human Rights Council. We note that this right was also recognized by the UN General Assembly in July 2022. My Government would recommend the Study Groups to consider the added value of the right to a clean, healthy and sustainable environment in relation to sea-level rise.

Thank you.