

**Report of the International Law Commission on the work of its
seventy-third session
(Agenda item 77)**

Cluster 2

**Chapter VI (Immunity of State officials from
foreign criminal jurisdiction) and
Chapter IX (Sea-level rise in relation to International Law)**

Mr. Chairman,

In the interest of time, my delegation will deliver an abbreviated version of its statement. The full statement will be made available for publishing on the website of the Committee.

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

Mr. Chairman,

Allow me to first address the topic "Immunity of State officials from foreign criminal jurisdiction".

We thank Ms. Escobar Hernández, the Special Rapporteur, for her work on this very important subject during her tenure in the Commission and we congratulate her and the Commission on being able to conclude the first reading of these Draft Articles.

At the same time, we believe the momentum achieved should not be lost, and therefore it's paramount a new Special Rapporteur is appointed as soon as possible so we can build on what has been achieved so far.

Mr. Chairman,

Portugal has throughout the years advocated that the Draft Articles should translate a careful balance between, on one hand, an understanding of immunity as essential to protect the legitimate interests of the State and, on the other hand, a rights-based approach centered on the individual and that is not complacent with the commission of core international crimes for which no immunity should be accorded.

Portugal believes the Draft Articles in its current version are balanced *and successfully respond to the concerns the Commission has outlined in paragraphs 5 to 9 of its Commentary.*

Considering it has been achieved such balance at first reading already, it is important in our view to clarify how to proceed, namely on what to recommend to the General Assembly.

As the Commission has pointed out in paragraph 2 of its Commentary, the Commission has along its history approached the issue of immunity from multiple angles and with multiple objectives. From those debates resulted *the Vienna Conventions on Diplomatic Relations and Consular Relations, the Convention on Special Missions, and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.* All of these are legally binding instruments which mainly codified customary international law.

Thus, we believe the issue at hand does not present such specificities that would dictate a departure from previous practice. Rather we should be coherent with that practice and proceed to the Second Reading having in mind a recommendation towards using these draft articles as basis for a future international treaty.

Mr. Chairman,

Looking now to the particulars of the Draft Articles, we are encouraged by the solution achieved to preserve the status of international courts. As we have previously said in this forum, international criminal tribunals are vital in the fight against impunity for the most serious crimes of international concern. We believe that the new paragraph 3 of draft article 1 is liable to achieve three very important goals: firstly, to highlight the independence of the regimes applicable to immunity before national criminal courts and from international criminal tribunals; secondly, to safeguard the application of the legal frameworks applicable to the functioning of the latter; thirdly, to present a text applicable to all States.

Mr. Chairman,

We also take note of the introduction in this draft of Part Four, regarding procedural provisions and safeguards. My delegation understands this as a step towards compromise and as a possible reassurance against misuse of proceedings against State officials. Ensuring that these procedural safeguards are part of international law will have a beneficial impact far surpassing the limits of this instrument.

We commend the Commission for making good use in this Part of best practices regarding this issue, as well as for drawing on comparable instruments such as the Vienna Convention on Diplomatic Relations.

Mr. Chairman,

We take further good note of the introduction of a dispute settlement clause, which we believe is useful, regardless of the nature of the final outcome of the work of the Commission in this topic, and which puts this instrument in line with instruments on similar matters.

Draft Article 18 as proposed by the Special Rapporteur is a good starting point for the discussion by establishing a system for the settlement of disputes divided

into two consecutive phases: negotiations and recourse to arbitration or the International Court of Justice.

Mr. Chairman,

To conclude, Portugal looks forward to the second reading of these Draft Articles. We hope we will be able to build on the good work of the Commission.

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

Mr. Chairman,

Allow me to now address the topic "Sea-Level Rise in relation to International Law". My delegation would like at the outset to praise the International Law Commission for reconstituting the Study Group on sea-level rise.

Portugal would like to convey its appreciation to the Co-Chairs of the Study Group on issues related to statehood and to the protection of persons affected by sea-level rise, Ms. Patrícia Galvão Teles and Mr. Juan José Ruda Santolaria, for the Second Issues Paper and for providing a selected bibliography on the topic. We would also like to thank all other members of the Study Group for their active discussions during the present session.

Portugal underlines the importance of urgently address the legal questions concerning the multiple implications of Sea-level rise. In this vein, we welcome the several statements by the Secretary-General of the United Nations, António Guterres, calling for the need of determined action from the wider membership.

Mr. Chairman,

The examination of this topic raises some very complex and contentious issues. Hence, we commend the high-quality Second Issues Paper, that includes

extensive relevant information on the topic, notably in regard to existing and emerging practice of States, international organizations and other relevant entities, available scientific data and the different sources of law.

Sea-level rise is a global phenomenon that knows no boundaries and that has an impact on all states and several millions of people. While international law has a very important role in addressing this global threat, it is clear that the applicable legal framework is somewhat fragmented.

We thus welcome that the co-chairs indicated their intention to approach the statehood and protection of persons aspects related with sea-level rise from the perspective of both the existing law and the law that needs to be developed to tackle this global phenomenon.

Mr. Chairman,

Portugal looks forward to the continuation of the discussions within the Study Group on the basis of the Second Issues Paper presented this year by the two co-chairs. Those discussions will be relevant for the years ahead knowing that the sea level rise could put more than 800 million people in coastal cities at direct risk by 2050.

Thank you, Mr. Chair.