



PERMANENT MISSION OF ROMANIA  
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**Report of the International Law Commission  
(73rd Session, A/77/10)**

*Cluster II*

*Chapter VI – Immunity of State officials from foreign criminal jurisdiction  
Chapter IX – Sea-level rise in relation to international law*

**Speech delivered by Ms. Alina Orosan  
Director General for Legal Affairs  
Ministry of Foreign Affairs of Romania**

**New York, 28 October 2022**

*Chairperson,*

In relation to the second cluster of topics, my delegation submits the following comments:

### ***Chapter VI - Immunity of State officials from foreign criminal jurisdiction***

We express our sincere appreciation for the work undertaken by the ILC on the very complex and sensitive topic related to the *Immunity of State officials from foreign criminal jurisdiction* and especially we would like to congratulate the Special Rapporteur, Ms. Conception Escobar Hernandez who put a significant amount of effort into this project and steered the work to a very good result. We are particularly very pleased that the adoption of the draft articles in the first reading was consensual.

In our view, the approach followed has managed to establish a good balance between the respect for the immunity of State officials and the protection of other values shared by the international community, such as accountability for the most serious crimes under international law.

From this perspective, as we have mentioned on previous occasions, we find valuable that the draft articles tackle the question of the relationship between the immunity of State officials from foreign criminal jurisdiction and the obligation to cooperate with international criminal tribunals. Romania fully supports the accountability for the most serious crimes committed against civilians and the essential role of the international criminal tribunals in that respect.

The current wording of the paragraph 3 of Article 1, stating that the current draft articles *do not affect the rights and obligations of States Parties under international agreements establishing international criminal courts and tribunals as between the parties to those agreements*, could represent a safeguard in order to preserve both regimes. However, as a matter of formulation, the last phrase *as between the parties to those agreements* might appear redundant.

As for the procedural provisions, in principle, we believe they offer the necessary guarantees to preserve the interests both of the forum State and of the State of the official.

However, in respect to the invocation of immunity (Article 11), we would like to reiterate our suggestion to have more clarity as to the consequences of failing to invoke it within a reasonable time. In light of the diligence that States should manifest in exercising this right at the earliest stage in the proceedings, in good faith and not abusing of its discretion, we see merits in prescribing its invocation as soon as possible. At the same time, the non-exercise of this right as early as “the State becomes aware that the criminal jurisdiction of another State could be or is being exercised over the official” should not prevent the State to invoke it at a later stage. For instance, taking into consideration the obligation of the forum State to address the issue of the immunity *in limine litis* and also seek, for the purposes of clarification of its incidence, the cooperation of the State of the official (Article 13), the immunity could be also invoked during the consultation procedure.

My delegation remains further engaged on this topic and is mindful of the decision of the Commission to send the draft articles to Governments for their consideration and possible comments by 1 December 2023. Romania will do its best to contribute to this exercise.

In the context, I would like to inform about a regional seminar *on States' obligations under public international law in relation to immunity of State officials* we have organized in Bucharest on 21 September 2022, in the margins of the meeting of the Committee of Legal Advisers on Public International Law of the Council of Europe. The event facilitated an academic and expert exchange of views on this complex topic with focus on the articulation between the relevant jurisprudence of international courts and the customary immunities of State officials.

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

Romania follows with great interest the Commission's work on the seminal topic "Sea-level rise in relation to international law" and commends the Co-Chairs Ms. Galvão Teles and Mr. Ruda Santolaria for a very well documented and systematized second issues paper. As previously stated, sea level rise will impact directly more or less all coastal States, and indirectly all other States, through social and economic effects.

Romania reaffirms its steadfast position that United Nations Convention on Law of the Sea should be the cornerstone of relations between States. As a party to UNCLOS, Romania underlines the unified and universal character of the legal framework provided by the Convention that should represent the fundamental basis for any maritime legal issues; as such, we underline that preserving the baselines and outer limits of maritime zones is crucial to legal stability.

In this regard, we do not seek for legal innovations or amendments.

With regard to the second issues paper, we recognize the many difficult questions exposed by the analysis of the sea level rise topic against statehood and the protection of human rights. We reserve the right to comment on these questions at a later stage in expectation of further research to be assumed by the Study Group.

At this moment, we limit ourselves to noting that the topic invites to innovation and adaptive solutions as there is virtually no precedent to rely on or invoke. However, where there is no need to depart from the standing law, we see no reason to be original. Hence, we find merit in a prudent approach – and we recognize the interest of the Co-Chairs in this method – and at this point simply map the law against the particularities of the sea level rise as identified in the second issues paper in order to determine where new legislation is needed since the normative framework as it stands would not respond to all particularities of the situation.

From this perspective, in relation to statehood, we see the focus rather on *how a State can continue to function* should its territory be affected by sea level rise beyond inhabitation and not on *if the State continues to exist in such a case*.

On the human rights side, we note that there is increasing litigation on the issue of climate change and its negative impact on human rights. Therefore, there could be potentially important source of inspiration to serve the further analysis of the topic by the Study Group and by the ILC generally.

As mentioned, this delegation reserves the right to further comment on these matters.

Thank you!