



UNITED STATES MISSION TO THE UNITED NATIONS

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**U.S. Remarks at a Meeting of the Sixth Committee on Agenda Item 77:
Report of the International Law Commission on the work of its seventy-third session.
Cluster Two
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October 27, 2022**

Thank you, Mr. Chairman. The United States is pleased to address both topics in this cluster, immunity of State officials from foreign criminal jurisdiction, and the ILC working group's efforts on sea-level rise in relation to international law.

Immunities of State Officials from Foreign Criminal Jurisdiction

Turning first to immunity of State officials from foreign criminal jurisdiction, we note our appreciation for the efforts of Special Rapporteur, Concepcion Escobar Hernandez, on this challenging topic. We welcome also the thoughtful contributions by other members of the ILC.

As detailed in previous statements, the United States has longstanding concerns with these Draft Articles that remain unaddressed. We will not raise them all again here, but highlight once again that we do not agree that Draft Article 7 is supported by consistent State practice and *opinio juris* and therefore does not reflect customary international law. We also reiterate our belief that the Commission should work by consensus to best weigh the implicated, serious issues and account for State practice.

Despite the concerns that the United States and others have articulated over the years, the Commission adopted the Draft Articles at the first reading this summer. We look forward to the opportunity to submit detailed written comments on this draft. The United States hopes that the Commission will reflect further on the concerns raised by the United States and others in previous statements before the Sixth Committee and in our future written submissions. If the articles are left unrevised, it will be important for the commentary to reflect where such articles reflect a proposal for the progressive development of the law rather than codification. Further, if various of the draft articles continue not to reflect customary international law and diverge from the expressed views of States, the possibility that the Commission's long efforts will result in draft articles adopted by States as an international convention is greatly reduced. We urge the Commission to reconsider the draft articles in this light, both in substance and in format.

Sea-level Rise in relation to International Law

With respect to the topic of sea-level rise in relation to international law, the United States would first like to note that it has announced a new policy on sea-level rise and maritime zones. Under this policy, which recognizes that new trends are developing in the practices and views of States on the need for stable maritime zones in the face of sea-level rise, the United States will work with other countries toward the goal of lawfully establishing and maintaining baselines and maritime zone limits and will not challenge such baselines and maritime zone limits that are not subsequently updated despite sea-level rise caused by climate change.

Turning to the ILC's more recent work on this topic, the United States appreciates the Commission's efforts with respect to issues related to statehood. These matters are of vital concern to States that are most at risk from sea level rise. The issues that the Study Group has identified in its work so far raise complex legal questions related to foundational aspects of international law. Given the lack of applicable State practice in relevant areas, it is difficult to draw definitive conclusions on how international law will develop. The United States looks forward to working with other countries to address legal issues of statehood as they arise.

The United States also welcomes the Commission's consideration of protection of persons affected by sea level rise. One area that the United States has been focused on in this regard is climate-related migration. Last October, the White House released its Report on the Impact of Climate Change on Migration. To better address issues of protection in the context of climate change, the United States is considering ways to strengthen the application of existing protection frameworks, adjust U.S. protection mechanisms to better accommodate people fleeing the impacts of climate change, and evaluate the need for additional domestic legal protections for those who have no alternative but to migrate.

Thank you, Mr. Chairman.