

Seventy-ninth Session of the Sixth Committee

Agenda item 79

Report of the International Law Commission on the work of its seventy-fifth session

Statement by Iceland on behalf of the Nordic countries

Delivered by Sesselja Sigurðardóttir, Director General for Legal Affairs

21 October 2024

Mr./Madam Chair,

I have the honor to speak on behalf of the Nordic countries Denmark, Finland, Norway, Sweden and my own country, Iceland.

We would like to use this opportunity to make a few general remarks, before commenting on the topics covered in Cluster I of the Report of the International Law Commission. The Nordics reiterate our deep appreciation of the work of the Commission and its contribution to the progressive development and codification of international law in accordance with its mandate. We welcome the Commission's Report on the work of its seventy-fifth session and express our appreciation for the detailed summary provided in Chapter II of the Report.

We have taken note of all the requests for information contained in Chapter III of the Report. Examples of State practice are particularly pertinent for many of the topics currently under consideration, and we will make every effort to provide the

Commission with relevant information, where available, and encourage other States to do the same.

Mr./Madam Chair,

I will now turn to the first cluster and start with the topic of Immunity of State Officials from foreign criminal jurisdiction. The Nordics would like to thank the Commission for the work done thus far on this topic and convey a special thanks to the Special Rapporteur for his diligent work in preparing his first report which has inaugurated the second reading of the topic, and to the two previous rapporteurs.

The Nordic countries refer to our previous statements on the topic, and in particular the comments submitted to the Secretary General on behalf of the Nordic countries on 1 December 2023, which contain the shared views of the Nordic countries with regards to the draft articles adopted by the Commission on first reading. We recall our overall assessment that the work of the Commission represents a significant step towards a common understanding of the international legal regime relative to the immunity of State officials from foreign criminal jurisdiction. We welcome that.

As for the work done in the seventy-fifth session, the Nordic countries at this stage have the following general comments:

Firstly, we note the diligent engagement by the Special Rapporteur and the Commission with the comments submitted by States with regards to the draft

articles adopted by the Commission on first reading at the seventy-third session in 2022. We support the approach taken to the work of the Commission at this stage of the process, which bases itself on the general position that the views of States as well as new developments to the topic are central when considering the draft articles on second reading.

With regards to draft articles 1 and 2, the Nordic countries reiterate our position that these articles, as adopted by the Commission on first reading, adequately define the scope of the draft articles on immunity of State officials from foreign criminal jurisdiction and establish the key elements and definitions of their content. We continue to believe that the term “criminal jurisdiction” needs to be defined, or explained in another way, in the introductory provisions of the draft articles. This is essential both to the legal and practical scope of the draft articles. We note that the Drafting Committee considers it appropriate to consider the definitions in draft article 2 at the next session, when members will have a clear view of the entire set of the draft articles. We support that decision and invite the Commission to consider the concerns of the Nordic countries at that stage.

The Nordic countries support the formulation of Draft Article 1, paragraph 3, as provisionally adopted on second reading during the seventy-fifth session. We recall our support for an explicit reference in that provision to the international agreements establishing international criminal courts and tribunals, recognizing the autonomy of the legal regimes applicable to such international criminal courts

and tribunals, which remain outside the scope of the present draft articles. We concur with the decision to avoid a separate reference to international criminal courts and tribunals established by resolutions of international organizations. Such bodies, as far as they are relevant to the present context, will in any case have their ultimate legal basis in a treaty rule and thus not require special mention in the draft articles. Concerns relating to clarity on this point can be addressed by special reference in the commentaries.

The Nordic countries support the retention of Draft Article 3 as adopted on first reading and reiterate our view that the customary rules on immunity *ratione personae* as they presently stand cover the Head of State, Head of Government and Minister for foreign affairs. As for Draft Article 4 we support the decision to replace the expression “term of office” with the expression “period of office”, which more clearly reflects that immunity *ratione personae* relates to the actual period in which the Head of State is in office and accommodates better for the fact that Heads of State, including notably Monarchs, and Ministers for Foreign Affairs, do not necessarily have set terms of office.

The Nordic countries note the decision of the Commission to merge Draft Articles 5 and 6 as adopted on first reading, into one single draft article. This is in line with the proposal of the Nordic countries in the comments submitted on 1 December 2023 and we believe that this solution offers a simpler read and avoids an unnecessary division of the subject matter concerned. We further support the other

adjustments made to the text of what was in the first reading Draft Articles 5 and 6, and what has been provisionally adopted as Draft Article 5 during the seventy-fifth session. These changes enhance clarity and contribute to making the provision a simpler read.

Finally, the Nordic countries reiterate our appreciation to the Commission for engaging with the topic of Immunity of State Officials from foreign criminal jurisdiction and for the progress made during the seventy-fifth session. We will continue to collaborate with the Commission on the topic with great interest, as the focus in the upcoming session turns to the second reading of the remaining parts of the set of draft articles.

Mr./Madam Chair,

I will now turn to the topic of “Sea-level rise in international law”.

The Nordics continue to support the work of the Commission on this highly relevant topic. We thank the Co-chairs as well as all members of the Study Group for their ongoing work.

Scientific evidence indicates that regardless of any climate change mitigation, sea levels will continue to rise and stay elevated for an unforeseen time - although the magnitude and rate of sea level rise will depend on how fast emissions will be reduced.

The Nordics welcome the recent high-level plenary meeting on sea-level rise, where we all recognised the significant challenges posed by sea level rise, especially the threats faced by small island States and low-lying coastal communities.

Mr./Madam Chair,

As regards the work of the Commission, the additional paper to the second issues paper by the Co-chairs on statehood and protection of persons provides a detailed analysis of the complex issues arising from sea-level rise.

We note with interest the discussions in the Study Group on various bases for the continuity of statehood and the distinction made between situations of partial submergence of land surface that would be uninhabitable and situations of total submergence of the land surface as a result of sea-level rise.

We further recognise the challenges encountered by the Study Group in navigating existing legal frameworks with a view to identifying which may be applicable to the protection of persons affected by sea-level rise. We acknowledge the issue of apparent fragmentation and that there may be a need to address this.

In this regard, we voice our support for the Study Group's approach that human dignity should guide us when addressing the implications of sea-level rise. Climate change is the common concern of all humankind, and the responsibility lies with the international community to respond to all its grave and pressing challenges, including those caused by sea-level rise. This includes honouring

existing international legal obligations where they find application in the continuity of statehood and the protection of persons affected by sea-level rise.

Mr./Madam Chair,

International law serves to provide security, certainty and safety to all of humankind. It must be a vanguard of stability in the face of instability. It must provide protection to those who need it the most, including the States and communities confronting the threats of sea-level rise.

In this regard, the Nordics underscore the importance placed on the principles of legal stability and legal certainty in the Study Group's discussions. Our measures to address all aspects of sea-level rise, including the continuity of Statehood and the protection of persons, must ensure legal stability, certainty and predictability if they are to bear fruit and be effective.

Likewise, any discourse on sea-level rise in relation to baselines and maritime zones must be fully consistent with the United Nations Convention on the Law of the Sea, which sets out the legal framework within which all activities in the oceans and seas must be carried out. Legal stability and predictability based on international law are the necessary foundations for States in tackling the challenges posed by sea-level rise. For this reason, the integrity of the Convention, as well as its universal and unified character, must be maintained.

Addressing the threats brought by rising sea levels is the joint responsibility of all States, but we cannot address these threats through creative interpretation of

foundational legal instruments. Our best intentions cannot bridge unbridgeable gaps. That will only spawn further uncertainty and unpredictability. Here, we need legal action by the global community, and the Nordic countries stand ready to engage actively in such work, for the benefit of all, and in particular those most affected.

The Nordic countries are committed to climate action. We furthermore remain unwavering in our commitment to addressing sea-level rise in relation to international law. The work of the International Law Commission is valuable to this end. We look forward to the Study Group's final report on sea-level rise in relation to international law at the seventy-sixth session in 2025.

Mr./Madam Chair,

With regards to other decisions and conclusions of the Commission;

The Nordic countries welcome the recommendation of the Commission to include the following topics;

a) Compensation for the damage caused by internationally wrongful acts;

and

b) Due diligence in international law

We consider these topics pertinent additions to the long-term programme of the work of the Commission and we would be keen to see them being added to the active work programme of the Commission soon.



Furthermore, the Nordic countries also commend the Commission's recognition of the need to ensure gender parity in national and international institutions, including in terms of its own composition, where further progress should be made to comply with this objective. The Member States are, of course, best placed to ensure parity by presenting female candidates to run for a place in the ILC.

The Nordics would also like to draw attention to the trust fund on assistance to Special Rapporteurs that was established in 2022. We find it important that the work of the Special Rapporteurs is not affected by the lack of resources, and that also the Special Rapporteurs from developing regions have the necessary assistance to undertake the research required for the preparation of their reports.