



S T A T E M E N T

by

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Sixth Committee

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on the work of its seventy-fifth session (item 79)  
Cluster I*

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*(check against delivery)*

Mr. Chair,

At the outset, I wish to express our appreciation to the International Law Commission and its members for the report that has been presented to us earlier this morning. In particular, I would like to express my delegation's gratitude to the Chairperson of the Commission, Mr. Marcelo Vázquez-Bermúdez for his leadership throughout the seventy-fifth session.

Mr. Chair,

In my today's statement, I will focus on Chapters I, II, III, VII, X and XI of the Report, namely on topics "*Immunity of State officials from foreign criminal jurisdiction*" and the "*Sea-level rise in relation to international law*". I will also offer some comments on the "*Other Decisions and Conclusions*" of the Commission.

With regards to the topic of "*Immunity of State officials from foreign criminal jurisdiction*", allow me, first, to express our appreciation to the Special Rapporteur Mr. Claudio Grossman Guiloff, as well as to the previous Special Rapporteurs Mr. Roman Kolodkin and Ms. Concepción Escobar Hernández, respectively, for their valuable contributions.

My delegation welcomed the adoption of the 18 draft articles and the commentaries thereto by the Commission on first reading at its seventy-third session, and now, we commend the Commission for the progress done towards the second reading at its session this year.

We have read with a thorough interest the first report of the Special Rapporteur with focus on draft articles 1 to 6, together with the observations and commentaries received from the governments. In generally, we are of the view, that those draft articles reflect the customary international law.

In particular, Slovakia notes with satisfaction the clear definition of the scope in draft article 1, as well as the non-prejudice clause with respect to special rules of international law, related to the special status of persons and to the rights and obligations of States stemming from the international criminal jurisdictions. However, my delegation believes that draft article 1 should be redrafted to exclude from the scope of draft articles also the UN Security Council's referrals to the International Criminal Court, thus not affecting the rights and obligations of States under

such resolutions. Regarding draft articles 3 and 4 related to immunity *ratione personae*, Slovakia is pleased that the Commission did not depart significantly from their wording on first reading. Particularly, we believe that under customary international law, only *troika* enjoys immunity *ratione personae*. Extension of such immunity to other officials, in our view, does not find basis in State practice and *opinion juris*. We also took note with interest of the discussion in the Commission regarding the expression “term in office”. We note that the respective change in draft article 4, as provisionally adopted by the Drafting Committee, for the expression “period in office” is reflective of the terminology used by the International Court of Justice in paragraph 55 of its judgement in *Arrest Warrant* case.

Moving to draft articles 5 and 6, we see merits in employing a deeper connection with the legal concepts already enshrined in the Articles on Responsibility of States for International Wrongful Acts. We share concerns that granting the immunity *ratione materiae* for all State officials “acting as such”, would undesirably extend the immunity also for acts *ultra vires*, i.e. for acts where there is a lack of authority or a contravention of instructions. Respective changes suggested by the Special Rapporteur and subsequently reflected in the draft article 5 provisionally adopted in the Drafting Committee, are welcome.

Lastly, Slovakia believes that the current international law does favour the tendency that immunities from foreign criminal jurisdiction are sensible to the most serious crimes under international law. Accordingly, and specifically regarding the list of crimes in draft article 7, we wish to recall our previously stated position, that the immunity *ratione materiae* does not apply also in respect of the crime of aggression.

Mr. Chair,

Let me now address the topic of “**Sea-level rise in relation to international law**”.

Slovakia takes note of the work done by the Study Group on sea-level rise in relation to international law at the present session as reflected in Chapter X of the Commission's report. We thank the Study Group Co-Chairs Ms. Galvão Teles and Mr. Ruda Santolaria for their Additional paper to the second issues paper, focused on the sub-topic on statehood of States whose land surface might be totally or partially submerged or rendered uninhabitable and sub-topic on the protection of persons affected by sea-level rise.

The question of statehood is of relevance to many fields of international law. There is an abundant practice, jurisprudence and literature on issues such as continuity and discontinuity of a State or matters of preservation of State's legal personality. The factual situations, on the basis of which this practice and jurisprudence developed, did not include situations of the permanent loss of the entire territory due to a phenomenon of the sea-level rise. Studying these situations, however, requires to take due regard of well established principles and rules of international law.

The answer to the question what will happen to the statehood depends very much on the answer to the question what will happen to the population of that State, its national economy and institutions. The available options will largely depend on specific situations, and the choice from among these options will be a matter of sovereign decisions made by respective governments. The choice between these options may have different consequences for the statehood. The Study should therefore analyze realistic alternatives, including possibilities of integration with other States. The choice between these alternatives will be primarily a matter of national policy.

With this in mind, the Group should also analyze pragmatic alternatives for the protection of rights of affected population as well as for preservation of rights of States to their maritime zones when losing their land territory due to the sea-level rise. In this respect, paragraph 392 contains a list of interesting ideas.

The question of the protection of persons affected by sea-level rise, in our view, should be in the very heart of the topic. We agree with the view within the Group that "the current international legal frameworks that were potentially applicable to the protection of persons affected by sea-level rise were fragmented and mostly not specific to sea-level rise". As a generic basis for consideration of this subtopic, regard could be given also to the Commission's 2016 draft articles on the protection of persons in the event of disasters. We noted elements for discussion proposed in the additional working paper prepared by Co-Chairs, as well the discussion within the Study Group concerning its own working methods. We are looking forward to a substantive debate and proposals to be submitted for Sixth Committee's consideration in near future.

Mr. Chair,

Turning to the Chapter XI “**Other decisions and conclusions of the Commission**”, my delegation notes with interest the inclusion of two new topics – “*Compensation for the damage caused by internationally wrongful acts*” and “*Due diligence in international law*” - in the long-term programme of work the Commission. Should the Commission decide at the next session to commence its work on any of the topics on its long-term programme, Slovakia reiterates its view that the Commission's analysis of universal criminal jurisdiction might be of particular relevance, including for the respective deliberations of the topic in the Sixth Committee. In terms of working methods, we note with interest the decision to prepare a handbook. We understand that its aim is to enhance transparency and provide greater understanding of the Commission's internal working methods and procedures in addition to and within the limits set out in the Commission's Statute. Besides, we will also await results of the working group's consideration of certain long-standing questions such as the nomenclature and forms of output by the Commission. Further, we also voice the Commission's concerns about the discontinuance of the live streaming service of the UN webcast of its plenary meetings.

To conclude Mr. Chair, by promoting the progressive development and codification of international law, the Commission has played a crucial role in assisting the General Assembly in discharging its mandate enshrined in Article 13, paragraph 1 of the UN Charter. The 75<sup>th</sup> anniversary of the Commission provides us with a great opportunity to reflect on its contribution to the international law, but also on its current role and functioning. In this context we note the debates held at the commemorative event in Geneva in May this year, and we look forward to further discussions, including today afternoon.

I thank you.