



## **SLOVENIA**

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### **STATEMENT**

**BY**

**Dr Marko Rakovec, Director-General of the Directorate for International Law and Protection of Interests at the Ministry of Foreign Affairs of the Republic of Slovenia on**

**Agenda item 79: Report of the International Law Commission on the work of its seventy-fifth session**

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**79th Session of the General Assembly  
Sixth Committee**

**New York, 21 October 2024**

Mr Chairman,

Since I am taking the floor for the first time, I would like to congratulate Your Excellency Mr. Rui Vinhas, chair of the Sixth Committee, and reassure you my delegation's full support during this Committee's session.

This session of the Committee marks 80 years, almost to the day, since the conclusion of the Dumbarton Oaks Conference, which formulated the proposals for the establishment of an international organisation that would become the United Nations. Only five years later, the International Law Commission held its first session and is now considered the cornerstone of the international legal order. Slovenia would like to congratulate the ILC on this important anniversary and on its significant contributions over the past 75 years. Slovenia would also like to congratulate the two newly elected members of the Commission.

Mr Chairman,

The agenda of the Commission for its 75th session contained highly relevant topics. Slovenia would like to commend the Commission and the Special Rapporteurs for their excellent work; in particular, we would like to draw attention to the work of Special Rapporteur Mathias Forteau, which is the first report on the topic of non-legally binding international agreements. It was only included in the programme of work in 2023 and is becoming increasingly important in practice.

We welcome the decision of the Commission and the newly re-established Working Group on the long-term programme of work to include in its long-term programme of work the topic "Compensation for the damage caused by internationally wrongful acts" and the topic "Due diligence in international law", which have reached a sufficiently advanced stage in terms of State practice and judicial decisions to allow for progressive development and codification.

Mr Chairman,

I now have the honour to address the Sixth Committee in relation to the work of the International Law Commission on Chapter VII: **Immunity of State officials from foreign criminal jurisdiction** and Chapter X: Sea-level rise in relation to international law.

Mr Chairman,

With regard to the topic of **Immunity of State officials from foreign criminal jurisdiction**, Slovenia would like to express its gratitude to the Special Rapporteur, Mr Claudio Grossman Guiloff. Slovenia would also like to thank the previous Special Rapporteurs, Mr Roman A. Kolodkin and Ms Concepción Escobar Hernández, for their contributions to the work on this topic since it was included in the Commission's programme of work in 2007.

Given the vast scope of the topic and the fact that the issue of Immunity of State officials requires careful and thorough consideration, taking into account State practice, *opinio iuris* and trends in international law, we welcome the approach taken by the Special Rapporteur to focus only on draft articles 1 to 6 and to consider the remaining articles at the next session.

We welcome the Special Rapporteur's observation that States generally recognise the importance of balancing the principle of sovereign equality of States, and subsequent importance of maintaining international relations, with accountability for international crimes. With regard to the latter, Slovenia would like to highlight, as an example of ensuring accountability, the Ljubljana-The Hague Convention, a landmark treaty on cooperation of States in the field of international criminal law. Convention facilitates the effective investigation and prosecution of the most serious international crimes through very detailed provisions on mutual legal assistance and extradition upholding the highest standards of due process. Slovenia agrees with the members of the Commission who have pointed out that immunity is a procedural obstacle to the exercise of jurisdiction and cannot efface accountability for violations, in particular if criminal proceedings respect due process rights of the accused.

Mr Chairman,

Slovenia appreciates the clarification in paragraph (12) of the general commentary to the draft articles as to whether the draft articles reflect the codification of existing customary international law or the progressive development of international law. The Commission clarified that the draft articles contained a proposal for elements of both,

as appropriate. Further efforts by the Commission on this topic could contribute to both the progressive development and codification of international law.

We also agree that the terms “State official” and “act performed in an official capacity” can be additionally explained in the commentary and do not consider it necessary to elaborate on them in the text of the provision (draft Article 2).

With regard to draft Article 3 identifying persons enjoying immunity *ratione personae*, Slovenia considers that the provision reflects customary international law. We share the view that there is no basis for extending the definition to categories of officials beyond the 'troika'.

Mr Chairman,

Regarding the final form of the Commission's work, with some States favouring a draft treaty, some proposing to leave the outcome as draft articles, and others proposing a combination of draft articles and draft guidelines, we believe that the Commission's work on this topic should have a unified outcome. Its type could be better decided after the examination of the draft articles at second reading.

Slovenia shares the view that it is paramount to ensure that the views of States from all regions are adequately and equally considered. In this regard, the proposal that the Commission take into account relevant views expressed by States in contexts outside the formal consultation process is judicious, as long as it does not unnecessarily delay the work of the Commission.

Mr Chairman,

I would like to turn to the topic of **sea-level rise** as considered by the International Law Commission.

Sea-level rise is a direct consequence of anthropogenic climate change, which threatens low-lying coastal States, archipelagic States, small island States and small island developing States.

Although the Montevideo Convention on the Rights and Duties of States introduced a set of criteria for the qualification of an entity as a State, it cannot deny the existence of statehood once it has been acquired, even if one or more of these criteria are no longer fulfilled. The continuity of statehood is closely linked to the applicability of the principles of self-determination, the protection of the territorial integrity of the State, the sovereign equality of States and the permanent sovereignty of States over their natural resources. Not only would it be unjust to deny the existence of States due to the effects of an anthropogenic phenomenon not caused by the States most affected by its consequences, but it would also create a legal vacuum that would threaten international security, stability, certainty and predictability.

Thus, Slovenia upholds a strong presumption of the continuity of statehood and the international legal personality in the case of States whose land territory might be totally or partially submerged or rendered uninhabitable due to rising sea levels caused by climate change.

Mr Chairman,

Slovenia believes that sea-level rise is a common responsibility of mankind. The international community has a collective responsibility and obligation to cooperate and assist the particularly affected States in preserving their territory and territorial integrity and in protecting their people. Slovenia agrees that it is not a question of attributing new rights to the States affected by sea-level rise, but of ensuring the preservation of existing rights, which the affected States legitimately possess under international law. In this regard, the preservation of legal entitlements to land and maritime areas under the jurisdiction of the affected State, in accordance with the combined application of the Montevideo Convention, the United Nations Convention on the Law of the Sea and the Vienna Convention on the Law of Treaties of 1969, is essential.

Mr Chairman,

In conclusion, Slovenia has taken note of the Commission's requests for comments, observations and information on the topics of the Commission's report and will provide any information relevant to the Commission's future work on these topics.

Thank you.