



79th session of the United Nations General Assembly Sixth Committee: Agenda item 79, Report of the ILC on the work of its 75th Session (Cluster 1)

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Statement by Lucy Christian, Executive Officer, Australian Department of Foreign Affairs and Trade

Permanent Mission of Australia to the United Nations

Thank you Chair,

I have the honour to deliver this statement today on behalf of Australia.

Immunity of State Officials from Foreign Criminal Jurisdiction

We thank the ILC for its extensive work on this topic, and welcome the opportunity to continue to engage in this process and to provide comments and observations today.

Australia would like to thank the new Special Rapporteur for his work as reflected in the Special Rapporteur's first report. Australia also notes draft articles 1, 3, 4 and 5, as provisionally adopted by the Drafting Committee.

As an overarching comment, Australia urges the Commission to continue to clarify whether particular provisions reflect existing rules of customary



international law or represent proposals for the progressive development of the law. Australia also encourages the Commission to reflect new and relevant developments in State practice and jurisprudence as the draft articles and their commentaries continue to mature. Australia would also welcome clarification on the relationship between immunity and inviolability in the commentaries.

Chair,

It is clear that the content of draft article 7 is an important feature of the draft articles.

As set out in Australia's submission to the ILC in December 2023, Australia is a strong proponent of accountability for serious international crimes. Such abhorrent crimes are contrary to the interests of all States. It is therefore in the interests of all States to ensure these crimes are prevented and that perpetrators are prosecuted.

Australia considers that the current draft article 7 reflects the progressive development of international law. That said, we acknowledge that there is a discernible trend of the non-applicability of functional immunity for serious international crimes at the national level.



In Australia's view, any exception to, or limitation on, functional immunity would apply to serious international crimes as a category, rather than particular crimes. In this regard, we consider that the scope of crimes captured by any exception must be limited to the most serious international crimes.

Since draft article 7's provisional adoption, the ILC has adopted procedural safeguards in draft articles *8 ante*, 8, 9, 10, 11 and 12. Australia welcomes steps towards the development of procedural safeguards as an important means to protect State officials from unsubstantiated and politically-motivated prosecutions.

In Australia's view, further procedural safeguards are necessary. We consider that, in cases of competing claims of jurisdiction, the State of nationality or the State in the territory of which the criminal conduct was alleged to have occurred shall have primary responsibility to investigate and prosecute any alleged serious international crimes, provided it does so in a genuine and independent manner.

Australia welcomes further engagement and looks forward to ongoing discussions on the draft Articles.

Chair,

On the topic of Sea-Level Rise in relation to International Law



Australia continues to support the ongoing work of the Commission on this topic – one that is of utmost importance to our region. Climate change is the greatest shared threat to the livelihoods, security and wellbeing of all countries. It poses a particular and urgent threat to low-lying coastal cities, communities and ecosystems, including in the Pacific. Accordingly, the Commission’s work—which has helped to progress national, regional and international action and responses on this issue—could not be more timely or important.

We thank the Co-Chairs of the Study Group for the additional paper to the second issues paper, as well as the Secretariat for its memorandum identifying elements for future work. Both provide a sound basis for continued discussion and development of international law on this topic.

Australia welcomes the particular focus this year on legal issues and developments in State practice in relation to statehood and the protection of persons. We are pleased to be working with our Pacific partners and others in taking steps to preserve their statehood and protect the human rights of persons affected by sea-level rise.

We were proud to join the ground-breaking *Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-*



Related Sea-Level Rise, endorsed by Pacific Island Forum Leaders in November 2023 (the 2023 Declaration). The 2023 Declaration affirms that the statehood and sovereignty of Members of the Pacific Island Forum will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea level rise. It expresses a commitment by Forum Members to protect persons affected by climate change-related sea level rise, including with respect to human rights. The 2023 Declaration is grounded on existing principles of international law. This includes the legal presumption that a state, once established, continues to exist, and that international law does not contemplate the demise of statehood in the context of climate change-related sea-level rise – a novel situation for which there is no legal precedent. It builds on the important work of the 2021 Pacific Island Forum *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea Level Rise* (the 2021 Declaration), which upholds the integrity of the UN Convention on the Law of the Sea (UNCLOS) and preserves the rights and entitlements of maritime zones established in accordance with UNCLOS.

Together, the 2021 and 2023 Declarations set out regional positions with respect to the novel and complex issues posed by climate change-related sea level rise. They are yet another example of the sustained and innovative



leadership of Pacific voices in pushing global ambition in responding to climate change, and Australia is proud to join with the Pacific in support of these initiatives. We thank the many States that have already expressed support for the two Forum Declarations and encourage others to do the same.

We are also committed to transforming these initiatives into concrete action. This is reflected in the historic Australia-Tuvalu Falepili Union Treaty, which recognises for the first time in a legally binding instrument Tuvalu's continuing statehood and sovereignty, notwithstanding the impact of climate change-related sea level rise. The Falepili Union commits Australia and Tuvalu to working together to help the citizens of Tuvalu to stay in their homes with safety and dignity.

Chair,

Another area where the Pacific have been first movers is in seeking advisory opinions from the International Tribunal for the Law of the Sea (ITLOS) and the International Court of Justice (ICJ) in relation to climate change. Australia commends these initiatives and is proud to have actively engaged with them, and the leadership of Small Island States in this regard. Both the ICJ and ITLOS have an important contribution to make in clarifying the obligations of



all States to respond to the climate emergency, including with respect to climate change-related sea level rise.

Once again, we reiterate the value of the Commission’s work to date and look forward to further discussions at this year’s session. We urge all States to positively contribute as the Study Group works towards a final report on this topic to be presented in 2025.

Other Decisions and Conclusions

Turning to the other decisions and conclusions contained in the Commission’s latest report, Australia welcomes the appointment of the new Special Rapporteur, and supports the inclusion of “compensation for the damage caused by internationally wrongful acts” and “due diligence in international law” in the Commission’s long-term programme of work.

Finally, we wish to congratulate the ILC on its seventy-fifth anniversary and commend the Commission for its extensive work on the codification and progressive development of international law to date. Australia acknowledges the invaluable contribution the Commission continues to make to international cooperation, the strengthening of national legal capabilities and our pursuit of a world where differences and disputes are settled through institutions and agreed rules and norms, and not by power and size.