



# CZECH REPUBLIC

## Permanent Mission of the Czech Republic to the United Nations

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79<sup>th</sup> Session of the General Assembly  
Sixth Committee

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

Cluster I:  
Immunity of State officials from foreign criminal jurisdiction  
Sea-level rise in relation to international law  
Other decisions and conclusions

**Statement by**

**Mr. Martin Smolek**

**Director-General for Legal Affairs  
Ministry of Foreign Affairs of the Czech Republic**

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One Dag Hammarskjöld Plaza, 48<sup>th</sup> floor  
885 Second Avenue, New York, NY 10017  
tel.: +1 (646) 981 4001, fax: +1 (646) 981 4099  
[www.mzv.gov.cz/un.newyork](http://www.mzv.gov.cz/un.newyork)

Madam / Mr. Chair,

The Czech Republic would like to express its appreciation to the Special Rapporteur, Mr. Claudio Grossman Guiloff, for his first report on the topic “**Immunity of State officials from foreign criminal jurisdiction**”, which is now considered in the second reading. We also express our gratitude to the previous Special Rapporteurs, Ms. Escobar Hernández, who held this position for previous eleven years, as well as to her predecessor Mr. Kolodkin, who are no longer members of the Commission, for all the work done on this topic.

We note that this year, the Special Rapporteur and the Commission divided the second reading of the topic over two sessions, focusing now on draft articles 1 to 6. We appreciate that dividing the second reading should allow enough time to consider the topic and States’ views thoroughly.

In this regard, we would like to stress that in the second reading, the views of States (and, as the case may be, possible new developments relevant for the topic) are central to the work of the Commission. The Commission should not go beyond these limitations and should not reconsider already settled issues *de novo*. Therefore, we do not expect any substantive changes to the text of the draft articles 1 to 6, which are under consideration this year. The issues raised by States after the first reading, or by Commission members during the second reading, should be dealt with mainly in the commentaries. In this regard, we appreciate that the Special Rapporteur suggested that the Commission elaborate more detailed commentary on the relationship between acts performed in an official capacity and the rules of attribution under the articles on responsibility of States for internationally wrongful acts.

The Czech Republic commented on the work of the Commission on this topic regularly and submitted also written comments on the whole set of draft articles adopted in the first reading. In our written comments, we already expressed our opinion that draft articles 1 to 6, defining and specifying the scope of the immunity of State officials *ratione personae* and *ratione materiae*, reflect in principle customary international law. Therefore, we agree with the proposal of the Special Rapporteur and a number of Commission members to leave the text of the draft article 2 on the definitions unchanged and include any necessary clarifications in the commentary. We also concur with the conclusion to maintain the current text of draft article 3 limiting immunity *ratione personae* to Heads of States, Heads of Government and Ministers of Foreign Affairs. While the wording of the judgment of the International Court of Justice in the *Arrest Warrant* case was invoked in this relation, we do not see any consistent State practice that would suggest that any persons beyond the above mentioned “Troika” enjoy such an immunity. Adding any “without prejudice clause” in this sense, even if it was to be put only in commentary, would amount to regressive development of international law, rather than its progressive development or codification.

On the other hand, we are not convinced that suggested textual changes to draft article 4, paragraph 3 (deletion of the word “application”) and draft article 5, paragraph 1 (defining the scope of immunity *ratione materiae*) were sufficiently explained and we would appreciate more information by the Commission justifying these amendments.

Bearing in mind that the draft article 7 was not considered by the Commission this year, we nevertheless wish to reiterate our position that the Commission should seriously reconsider the issue of the crime of aggression being listed in this provision as one of the crimes in relation with which the immunity *ratione materiae* does not apply. In this context, we refer to our written comments submitted in December 2023 and we invite the Commission to reflect upon this issue during its next session.

As regards the final outcome of the work of the Commission on this topic, we already expressed our position, namely with respect to the draft provisions on procedural aspects of the immunity of State officials, that we prefer the non-binding form of recommendations or good practices. We expect that this issue will be discussed more thoroughly during the next year’s debate on the report of the Commission.

Madam / Mr. Chair,

We note the progress of the Commission in its consideration of the topic “**Sea-level rise in relation to international law**” and the work of the Study Group, chaired by Ms. Galvão Teles and Mr. Ruda Santolaria. We also appreciate the memorandum prepared by Secretariat and identifying elements in the previous work of the Commission that could be relevant for the work on this topic.

This year, the Study Group considered the issues related to statehood and the protection of persons affected by sea-level rise. As regards first of these issues, we are of the opinion that the Commission should approach the question of the existence, continuity or discontinuity of a State in the context of a sea-level rise with caution, avoid overly speculative and academic discussions and focus on realistic and practical approaches to specific situations which might be the result of the sea-level rise. We concur with the opinions that the issue of statehood and its continuation should be particularly considered in the context of the protection of persons affected by sea-level rise. We also agree with the views expressed by some members that certain aspects of the topic require essentially political considerations and solutions by States and may not be suitable for legal considerations by the Study Group.

In this year’s discussions, the Study Group concluded that the existing international legal frameworks potentially applicable to the protection of persons affected by sea-level rise are fragmented and mostly not specific to sea-level rise. Thus, as we already observed, the outcome of the work of the Commission on this topic could be an analysis of these existing frameworks, which could serve as a basis for identification of legal solutions to various specific scenarios caused by the sea-level rise.

Nevertheless, we disagree with the proposal voiced by some members that a framework convention on the issues related to sea-level rise should be drafted. In our view, the consideration should be concluded with a final report on the topic as a whole in 2025.

In conclusion, we would like to reiterate the need to preserve the integrity of the UN Convention on the Law of the Sea [UNCLOS] in the work of the Commission on this topic. We also point out that in dealing with this topic, the State practice based on the Convention is essential, and that its consideration must continually take into account scientific findings over time relating to sea-level rise.

Madam /Mr. Chair,

I would also like to comment briefly on “**Other decisions and conclusions of the Commission**”. The Czech Republic notes with interest the inclusion of topics “Compensation for the damage caused by internationally wrongful acts” and “Due diligence in international law” in its long-term programme of work. In our opinion, the first topic mentioned is an example of area of international law where the Commission could engage in preparing drafts for progressive development of international law and its codification, which is the very purpose of the Commission. The second topic also deserves the Commission’s attention, since the concept of due diligence is becoming increasingly relevant, although its legal character and content lack clarity and have been understood and interpreted in different and inconsistent ways.

In this respect, we would like to note that, in the discussions of the Sixth Committee, the Czech Republic together with other States also this year proposed to refer the topic “Universal criminal jurisdiction” to the International Law Commission. This topic is subject of intense discussions and has been included in the long-term programme of Commission already for some time. Therefore, we would like to support the inclusion of this topic on the active programme of the Commission.

Thank you, Madam / Mr. Chair.