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PERMANENT MISSION OF THE STATE OF ERITREA TO THE UNITED NATIONS
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STATEMENT DELIVERED BY THE DELEGATION OF ERITREA

SIXTH COMMITTEE

79TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

**AGENDA ITEM 79: Report of the ILC on the work of its 75th session – Cluster I, Chps: VII
*Immunity of State officials from foreign criminal jurisdiction and X Sea-level rise in
relation to international law***

23 OCTOBER 2024, NEW YORK

Chair,

Eritrea wishes to express great appreciation to the chair of the International Law Commission, Mr. Marcelo Vázquez-Bermúdez, and all the distinguished members of the Commission as well the Secretariat, for their hard work and efforts during the seventy-fifth session resulting in an extensive report on the work of the ILC. We would also like to thank the members of the ILC for encouraging constructive dialogue with Member States as well as the Commission's positive contribution to the progressive development and codification of international law.

My delegation aligns itself with the statement delivered by Uganda on behalf of the African Group concerning Cluster I of the ILC report. We echo the importance of regional perspectives such as African states in relation to the topics discussed by the ILC.

Allow me to share the following observations concerning Chapter VII on *Immunity of state officials from foreign criminal jurisdiction*, and Chapter X on *Sea-level rise in relation to international law* in my national capacity.

Chair,

On the approach taken by the Commission for the second reading of the draft articles on *Immunity of state officials from foreign criminal jurisdiction*, Eritrea congratulates the Special Rapporteur Claudio Grossman on his appointment and welcomes his effort to thoroughly consider States' views, in both written comments and in the Sixth Committee. My delegation recognizes the topic's legal complexity and contentious nature, as well as the adversarial dynamics within the Commission, which resulted in a highly unusual non-unanimous decision at its seventy-third session (2022) to adopt the entire set of draft articles on first reading.

At the outset, Eritrea would like to stress the importance of preserving the equal sovereignty of States and friendly relations between States, as well as maintaining international peace and security. In this respect, we are concerned that the exercise of extraterritorial criminal jurisdiction over a state official, in particular without State consent, would go against the purpose of the draft articles.

When considering that there has been a discernible trend towards limiting the applicability of immunity from jurisdiction *ratione materiae* in respect of certain types of behavior that constitute crimes under international law, the Commission has consulted 10 domestic laws of States. Eritrea notes that the ILC failed to give adequate and equal consideration to the views of States from all regions. This leaves us with the question of the standard that the ILC is using to define 'prevailing trends'?

My delegation acknowledges that mastering the role on the edge of legal technicality and progressive development is not an easy task for the Commission. However, Eritrea stresses that the ILC should lead by a clear distinction between identifying issues where codification of *lex*

lata is adequate and vice versa, where progressive development through suggested improvements to the *lex lata* is preferable. In this regard, unambiguously identifying customary international law is a precondition as opposed to shaping relevant laws in a semantic process of meaning construction, conditioned by preferences and deliberative justifications.

It is in this context that Eritrea shares reservations about draft article 7, on the exceptions of immunity. My delegation is of the view that this article does not reflect customary international law, nor codification of existing international law and we note that it lacks consistent state practice and *opinio juris*. Additionally, Eritrea fundamentally reserves on the list of crimes under article 7(1) as well as the international treaties to which these crimes refer to in paragraph 2 of the same article, as these are not instruments that enjoy universal acceptance.

To conclude on the topic of *immunity of state officials from criminal jurisdiction*, my delegation suggests to proceed with caution. Eritrea welcomes the second reading of the draft articles that would take into consideration the views expressed by States and with the objective of reaching consensus within the Commission.

Chair,

Turning now to Chapter 10 of the Report of the ILC regarding *Sea-level rise in relation to international law*, Eritrea welcomes the Study Group's continuing efforts to address such a complex issue through both the first and second issues paper. The unprecedented nature of challenges that arise amidst climate crises have become increasingly alarming. Sea level rise is, foremost, among those consequential challenges, and adequate responses deserve priority given the existential threat it poses on low-lying nations worldwide. In particular Small Island Developing States, these States are by far the most vulnerable to the impacts of sea-level rise, as it touches upon their very existence. In that regard, we are glad to see that equity together with legal stability are considered guiding principles of the Study Group's work on this topic.

Coastal States like my own country cannot ignore the impact of sea-level rise. With more than 350 islands and our territorial waters making about half the size of our total land mass, Eritrea is disproportionately vulnerable to climate change. It is unequivocal that the marine and terrestrial ecosystem, as well as the coastal biodiversity, will be negatively affected over a longer period of time.

With approximately 5% of the national population living in coastal areas, sea-level rise will pose a profound threat to coastal communities in Eritrea as their livelihoods depend on artisanal fishing and fishery products. Fishing is an inherited economic tradition that closely attaches these communities to the sea. The rising of the Red Sea level will disrupt these traditional livelihoods and could lead to economic hardship.

Additionally, we recognize the threat that sea-level rise could pose on our tourism aspirations. Eritrea's pristine coastal marine habitat, the safe and secure environment as well as our rich cultural heritage and hospitable population along the coastline, are a strong basis for Eritrea in developing a sustainable tourism sector.

In the context of sea-level rise, we emphasize the need for stable maritime zones. Eritrea underscores that the final outcome of the Commission's work on the topic should guarantee the sovereign rights that States are claiming over their maritime spaces. There are parts within Eritrea's territory that consist of low lying and sandy coastal areas, which are at constant risk from erosion, but in particular with the rise of sea levels and climate impacts. For this reason, we stress that baselines and maritime boundaries are preserved and that the sovereign and jurisdictional rights of States over their maritime spaces, in accordance with traditional sources of international law, are protected. Littoral States have a vital and indispensable role in securing and promoting a sustainable and stable maritime ecosystem.

While my delegation sees merits in the ILC's pragmatic approach to reducing legal uncertainties regarding maritime boundaries and the limits of maritime zones at a time where we are facing

challenges from the impacts of sea-level rise, we underline that proposals for legal responses to these challenges should not be limited to good-faith interpretation of the United Nations Convention on the Law of the Sea (UNCLOS).

UNCLOS does not answer all the questions concerning legal stability, security, certainty, and predictability. There are other relevant sources within international law, such as customary law, general principles of law as well as other instruments. Therefore, we should be cautious with a close interpretation of the Convention.

Chair,

To conclude, Eritrea firmly stands in solidarity with the most vulnerable nations, ensuring their voices are heard and their futures secured. As we move forward, my delegation supports building a common understanding towards addressing the threats posed by sea-level rise and concrete actions that address both the immediate and long-term challenges of sea-level rise, safeguarding the rights, livelihoods, and cultures of all affected populations.

In this regard, my delegation would like to reaffirm our high regard for the work of the ILC Study Group on this important, yet complex, topic. Eritrea will continue to closely follow the future work of the Commission and we look forward to reading the final substantive report on the three sub-topics, expected to be issued in 2025.

I thank you.