

*Permanent Observer Mission
of the State of Palestine
to the United Nations*



البعثة المراقبة الدائمة
لدولة فلسطين
لدى الأمم المتحدة

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Statement by Loureen Sayej, Third Secretary, before the 79th Session of the General Assembly Meeting of the Sixth Committee on the Report of the International Law Commission Cluster I Immunity of State officials from foreign criminal jurisdiction), X (Sea-level rise in relation to international law) and XI (Other Decisions and Conclusions):

Mr. Chair,

My delegation would like to thank the ILC for its Report on the 75th Session and its continued service of international law. The ILC is a story of progress, development, and codification of international law; a story of a world based on a common language, rule of law, and peaceful relations; a world guided by the principles and purposes of the United Nations Charter.

As we reflect 75 years of ILC we also recognize 75 years of a collective effort to apply the law on those who have attacked the foundations of the world's peace; a collective effort to humanize international relations and prevent the violations of basic rights. But we also must recognize the contradictions we are facing. We find ourselves elaborating the law and the principles of equality, universality and humanity in these Halls, all while we are witnessing the most horrific episodes of calculated, methodic, and organized cruelty in modern history.

Where does that leave our collective duty to uphold these 75 years of existing laws? What about our obligation to prevent the unthinkable, protect the most vulnerable, and salvage the most oppressed?

This is why there is no time more pressing and there is no greater responsibility on the international community than to restore international legality, accountability and respect for humanity and dignity of all. The State of Palestine reiterates that the ILC is uniquely and authoritatively placed as the universal body tasked with analyzing international law; its direct institutional relations with the Sixth Committee must be protected and advanced.

The State of Palestine has been consistent and clear in its firm position that accountability for the most serious crimes of concern for the international community is essential for the integrity and sustainability of our international law-based order.

And at this moment in history, impunity for international crimes is the most significant threat to international peace and security. It undermines relations amongst nations and erodes the universality and efficacy of international law.

Impunity for international crimes has long haunted both our peoples and the development of international law and putting an end to it is a collective obligation. The State of Palestine affirms that accountability is the indispensable corollary to criminalization and deterrence of international crimes. We cannot outlaw the crimes while continue to provide immunity for perpetrators.

Impunity is rooted in a false sense of immunity of officials.

This is why international criminal law, from early stages in Nuremberg to the International Criminal Court, outlawed international crimes, especially those of *jus cogens* nature, and provided exception to immunity for perpetrators of official position. The ILC, in three different products, also did not hesitate in affirming that the official position of an individual cannot be invoked to relieve them of their criminal responsibility

In this regards, the State of Palestine attaches importance for the ILC's work on immunity of State officials from foreign criminal jurisdiction and their commentaries as they help further the rule of international law. We appreciate the Special Rapporteurs on their work on this topic with determination and vision. We recognize that this is the longest standing topic on the ILC agenda and appreciate that the ILC continues to ensure flexibility and efficacy of its deliberations and continues to hold the thin line between stability and advancement

Our view is that such immunity is in fact subject to important limits imposed by international criminal law as it has developed in recent decades. As a matter of customary international law, State officials do not enjoy functional immunity for international crimes under international law.

1. As for Article 1, the State of Palestine , as a State Party to the Rome Statue, recommends that the ILC further clarifies what it means by the "present draft article do not affect the rights and obligations of States Parties under international agreements establishing international criminal courts and tribunals as between the parties to those agreements" in relation to the jurisdiction of these Courts. We welcome the addition of "or relating to the operations of." We reiterate that the rights and obligations of States Parties under the Rome Statute cannot be affected by the draft articles including in situation where States are not parties to the Rome Statue. Indeed, as regards immunity before the ICC, all States Parties have accepted Article 27 of the Rome Statute which establishes the irrelevance of immunities and special procedural rules of official persons under national and international law to prosecutions before the ICC.
2. The State of Palestine supports Draft Article 7, which clearly states that immunity from the exercise of foreign criminal jurisdiction shall not apply in respect of: crimes of genocide, crimes against humanity, war crimes, crime of apartheid, torture, an enforced disappearance;
3. Because of the lessons of the past, the State of Palestine is of the view that the crime of aggression is the supreme international crime, the most unlawful form of the use of force and is accompanied by the commission of other crimes, and encourages its inclusion under Draft Article 7. Indeed, the exclusion of aggression defies all logic and has no legal basis whatsoever.
4. The State of Palestine recognizes that the draft articles fall at the intersection of different legal regimes and notes with the appreciation the ILC's work on striking a balance, addressing concerns, and adding procedural safeguards to Draft Article 7.

The State of Palestine appreciates the affirmation of the principle of peaceful settlement of disputes and the ancillary significant role of the ICJ as the minimum necessary to maintain and advance the applicability of the law. The State of Palestine is encouraged that draft articles do not contain an opt-out clause allowing for unilateral derogation. On the final form of the articles, the State of Palestine believes the ILC should recommend the elaboration of a treaty on the basis of the draft articles while maintaining that most of the proposed draft articles reflect customary international law and are as such already binding on States.

On sea-level rise in relation to international law, the State of Palestine welcomes the list of topics identified by the Study Group on the protection of displaced persons and the preservation of legal right of States affected by sea level rise.

The State of Palestine also recognizes that the ILC is responding to unprecedented challenges and filling gaps that will determine the very source of life in an inclusive and shared framework. In this regards, the State of Palestine is of the view that relevant principles and rules, including international human rights law, are applicable, including the right to a clean, healthy and sustainable environment. We also reiterate that the right to self-determination is foundational, unassailable, and inalienable, including through statehood, so is the sovereignty over natural resources.

Self-determination is a fundamental aspect of our understanding of the impact of sea-level rise on the continuation of statehood and on the peoples. The State of Palestine agrees with the assertion contained in the Second Issue Paper that “it is essential to preserve the right to self-determination of the populations of any small island developing States whose land territory is completely covered by the sea or becomes uninhabitable” and that “it is essential to preserve the right to self-determination of the populations of any small island developing States whose land territory is completely covered by the sea or becomes uninhabitable.”

The State of Palestine is of the view that discretion on how peoples express their right to self-determination must remain in their hands and should be one of the main pillars of the work of the ILC. We support the position expressed by many of the most affected States that “statehood will cease only if another form of expression of the right to self-determination is explicitly sought and exercised by that people.” Statehood continues to be a valid expression of self-determination, until peoples decide to express its right to self-determination through another political status.

The State of Palestine is committed to sea governance and to the resilience of millions of the communities whose livelihoods and viability depend on them. Our commitment to the sea and comradery solidarity with the affected communities stems from the universality and the unified character of UNCLOS as the main legal framework for all sea-related activities. We emphasize here the central role of UNCLOS in the ongoing deliberations and response from the ILC. Palestine will participate in the oral proceedings before the ICJ AO and will contribute to the discussions on self-determination and statehood.

The work by the ILC on sea-level rise embody our historical responsibilities, obligations towards humanity, future generations, and the earth we inhabit. It is about justice underpinned by the principle of common heritage of humankind and we look forward to their development.