

**UNGA 79 Sixth Committee / Agenda item: 79 - Report of the International Law Commission on the work of its seventy-first session: Cluster I
Statement by the Delegation of Armenia**

Mr Chairman,

On the project ‘Immunity of State officials from foreign criminal jurisdiction’, we support the intention of the Special Rapporteur to address the distinction between the exercise of criminal jurisdiction and inviolability in the commentaries to draft Article 1.¹ We likewise endorse his proposal to amend paragraph 3 of draft Article 1 and the commentary.²

On draft Article 2, we agree with the clarification provided on the question of nationality of the official and suggest that it be included in the commentary.³ We likewise support his proposal to provide further clarification in the commentary of the types of State officials in relation to military personnel.⁴ On further definition of the terms ‘criminal jurisdiction’ and ‘immunity’, we are content with the explanation in the commentary to Article 9.⁵

We concur with the Special Rapporteur on the exclusion of persons other than ‘the troika’ from Article 3.⁶ We welcome the proposed replacement of the words ‘acting as such’ in Article 5 with a cross-reference to Article 6.⁷ We are open to the potential merger of Articles 5 and 6 but suggest that the title of the merged article should be changed to ‘Persons enjoying immunity *ratione materiae*’.⁸ We also agree with the proposed amendment to paragraph 3 of Article 6 and additions to the commentary.⁹

On ‘Sea-level rise in relation to international law’, we welcome the additional paper to the second issues paper. We consider the consequences of sea-level rise for the continuation of Statehood to engage with fundamental questions of international law. An intricate issue is whether an existing ‘island’ within the meaning of Article 121 of the 1982 UN Convention on the Law of the Sea that becomes submerged continues to satisfy the customary criterion of ‘territory’ for Statehood.¹⁰ Dynamic interpretation through subsequent State practice within the meaning of Article 31 of the Vienna Convention on the Law of Treaties could enable the submerged island to remain an ‘island’ for the conservation of Statehood as well as existing maritime entitlements – issues that were discussed in the first issues paper of the Study Group.

Although the proposed presumption of continuity of Statehood would accord with State practice in other situations¹¹ the extent to which the presumption assists in addressing the novel

¹ A/79/10, para 169; A/CN.4/775 (3 May 2024) para 55 (‘First Grossman Report’).

² Ibid, para 178; First Grossman Report (note 1) para. 56.

³ Ibid, para 183; First Grossman Report (note 1) paras 60, 73.

⁴ Ibid; First Grossman Report (note 1) paras 63, 75.

⁵ Ibid, para 182; First Grossman Report (note 1) para. 76.

⁶ Ibid, para 184; First Grossman Report (note 1) para. 98.

⁷ Ibid, para 191; First Grossman Report (note 1) paras 129, 132-136, 143.

⁸ Ibid, para 190; First Grossman Report (note 1) para. 137.

⁹ Ibid, para 195; First Grossman Report (note 1) paras 158-163.

¹⁰ Ibid, para 355.

¹¹ Ibid, paras 362-363; Crawford (note **Error! Bookmark not defined.**) 700-717.

problem of permanent submergence.¹² In particular, there have been ‘very few cases of the extinction of States and almost no case of involuntary extinction’ in the Charter era.¹³ As the customary criterion of ‘population’ is a flexible one,¹⁴ recognition by other States can be of considerable importance.¹⁵ A flexible interpretation of the ‘population’ criterion could enable a submerged State to retain its Statehood even if most or all of its population were relocated to the territory of another State.¹⁶

Concerning the question of outcome, we support the format of a joint final report.¹⁷ Although we concur that ‘the emphasis should be placed on the interpretation and innovative application of existing treaties and arrangements’ in State practice, we invite the Commission to reconsider its decision in 2018 not to propose amendments to the UN Convention on the Law of the Sea.¹⁸

Regarding the other decisions and conclusions, we welcome the topic ‘compensation for the damage cause by internationally wrongful acts’. There is ‘now significantly more relevant practice than when the Commission adopted [Article 36 of] the draft articles on the responsibility of States for internationally wrongful acts in 2001.’¹⁹ The proposal to examine the topic of compensation in greater depth and with a practical focus fits the mandate of the Commission.²⁰ While reserving our position on form pending full debate, we consider the relationship of any product with the 2001 Articles to be key.

The topic ‘due diligence in international law’ is also a practical and fundamental one.²¹ The proposed objective ‘to identify the legal character, scope and content of a due diligence obligation in international law’ is lucid.²² Framed as being ‘associated with primary rules’,²³ the output could be framed as a freestanding one distinct from the 2001 Articles.

¹² Ibid, para. 366.

¹³ Ibid, 716.

¹⁴ Crawford (note **Error! Bookmark not defined.**) 52, 221-222.

¹⁵ Ibid, 223, 668-672.

¹⁶ A/79/10, paras 379, 368; Additional Paper (note **Error! Bookmark not defined.**) para. 83.

¹⁷ Ibid, para. 415.

¹⁸ Ibid, paras 389, 415.

¹⁹ Ibid., annex I (para. 4).

²⁰ Ibid., para. 5.

²¹ A/79/10, annex II (paras 3, 6).

²² Ibid, para. 18.

²³ Ibid, para. 28.