



*Subsequent agreements and subsequent practice in relation to the interpretation of*

Australia notes the divergent views of States on the categories of State officials entitled to immunity from foreign criminal jurisdiction and the scope of this immunity. For this reason, Australia welcomes the Commission's commitment to further consider specific terms, including 'officials' and the meaning of 'acts performed in an official capacity'. Such consideration will help ensure greater clarity and remove confusion. With this in mind, Australia is of the view that the Commission should explore the possibility of defining the term 'officials' within the draft articles.

Given the political sensitivities that this topic raises, new principles should be developed in a conscious and considered fashion. In Australia's view, particular issues that should be considered in the future work of the Commission on this topic include:

- the continuing need to balance the protections afforded by immunity with the prevention of impunity from the most serious crimes and human rights abuses,
- the link between State responsibility and immunity, and
- express or implicit waiver of immunity, noting the arguments occasionally advanced for interpreting provisions of human rights treaties as implied waivers of immunity. Australia considers that the legal basis of such arguments should be examined carefully as a question of treaty interpretation.

Australia looks forward to considering the continued work of the Commission on this topic in its subsequent sessions.