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68th Session of the
United Nations General Assembly

6th Committee

Agenda Item 81

Report of the International Law Commission
on the Work of its 63rd and 65th Session

Part I (Chapters I-III, IV, V und XII)

Statement by

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and Malawi of 12 and 13 December 2012 are indicative in this respect, clear guidance by the Commission would be helpful. We believe that a solution should be found in which the interest of the fight against impunity and respect of the rule of law.

Austria understands para. 2 of this draft article as a non-exhaustive enumeration of leges speciales concerning immunity. However, it must be clarified whether these special rules take precedence over the draft articles only if the relevant person enjoys a broader scope of immunity under those special rules or also if the special rules provide a lesser amount of immunity than the present draft articles.

Another question is whether these draft articles envisage providing immunity only if persons are present in the state of the forum or also if they are absent. In our view, the draft articles, or at least the commentary, should be very clear in this respect. We are of the opinion that such immunity applies also if the person is not in the territory of the forum state.

Mr. Chair, permit me to turn to draft article 3:

Austria supports the limitation of immunity ratione personae to the three categories of persons referred to in the present draft article. Although we cannot deny that other persons carry out similar functions, they only enjoy immunity as members of special missions. As such they fall under the exception of draft article 1, para 2.

A still open issue, so far not addressed by the Commission, is whether family members accompanying the relevant persons would also benefit from this immunity. Also in this context Austria suggests that the Commission follow the approach of the immunity of special missions.

As to draft article 4, there is no doubt that this immunity is enjoyed only during the term of office as expressed in para 1. Immunity as a procedural device would bar any formal proceeding during this time, even if the relevant acts were committed prior to the taking of office.

(Protection of the atmosphere)

We take note with great interest that the topic "P
on the agenda of the Commission and are looking forward to seeing the first report. Due to the limits of this topic decided by the Commission, it seems that only a restricted number of issues can be addressed. However, it will be advisable to address in this context also some of the issues currently excluded from the mandate, such as liability or the precautionary principle.

(Crimes against humanity)