

Chapter IV

~~“Subsequent agreements and subsequent practice in relation to the interpretation of treaties”~~

Mr. Chairman,

My delegation examined the Special Rapporteur on this subject. His report seems to refer to a kind of conceptual metamorphosis in its original inception in 2004 with a view to determining the subsequent practice of States parties to a treaty. It appears to be increasingly shifting towards interpretation of treaties. This could be described as “dynamic” interpretation of treaties rather than “static” interpretation of treaties. Articles 31 and 32 of the 1969 Vienna Convention determine the intention of the States parties at the time of the treaty’s conclusion. This means the prevailing practice at that time. It is not clear from the report about the references made to the Vienna Convention by invoking some articles of the Vienna Convention.

Indeed, the articles and the interpretations are sufficiently clear in this regard in the sense that the Commission apparently fails to include a temporal element in interpretation of the provisions of a treaty. What this body should do in its opinion is to discover the intention of the States parties with a view to determining the factors that may have influenced some States to ignore or simply modify certain provisions of a treaty to which they are parties. This is called “subsequent practice” and it is a confused way of interpreting treaties.

Furthermore, the Commission is mandated to determine under what conditions this practice, initiated or exercised by some States parties, having acquired the consent of the other parties to a treaty and their provisions of the treaty, is a practice that is a part of the interpretation of a treaty, an issue that arises when the meaning and scope of a given treaty are unclear and can be interpreted in different ways leading to different results.

Mr. Chairman,

Many references are made in the commentaries to the draft conclusions to non-State actors in the formation of customary international law through the influence of the practice of some States, a question that goes beyond the scope of this topic. The influence of these actors in the decision-making of some States to apply certain provisions of a treaty may be contrary to the clear provisions of a treaty, namely, expecting that

agreed obligations of the

One can hardly rule out that the actors may influence some states and lead them to apply the provisions of certain instruments in a different way other than envisaged under the text of the treaty. The key question that arises in such circumstances is this "new practice", which is incompatible with the clear provisions of a treaty, imposed on other States Parties to this instrument

To conclude, Mr. Chairman, the Commission is to stick to the original mandate and avoid safety in the topic beyond what was

Chapter V

Immunity

Mr. Chairman,

My delegation appreciates considerable effort made by Mr. Greenier, E. Hernandez, Special Rapporteur, as presented

For one thing, codification. Rather than formulating provisions de lege ferenda taking into account international relations

A key point that deserves to be mentioned by the beneficiaries of immunity *in nomine personae*. It is undisputed, established, that under international law, States, Government and Ministries, and their officials, enjoy immunity from the jurisdiction of other States when they exercise their functions. This immunity is not absolute, but it is a special power to them, justified and unjustified, free from any impediment when they are outside the territory of their respective States. Today, these States, the "troika" are regularly commissioned to represent their States in international and participate in international relations.

This relatively new but burgeoning model of international diplomacy merits special attention by international community and deserves to be recorded in international law. The legal practice and evolution of a growing number of States signify that immunity *in nomine personae* are consistently granted to representatives while a number of States have opted for this broad approach by involving, among others, the "Arrest Warrant Case" which does not limit immunity traditionally.

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