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STATEMENT

By the Representative of the Russian Federation
In the Sixth Committee of the 68th session of the UN General Assembly
on Agenda item:
Report of the International Law Commission on the work of its 65th session
(Topics: «Subsequent agreements and subsequent practice in relation to the interpretation of treaties»; «Immunity of State officials from foreign criminal jurisdiction»; «Protection of the environment»; «Crimes against humanity»)

Mr. Chairman,

Allow me first of all to thank the Chairman of the Commission Mr. Niehaus for presenting the Report of the Commission on the work of its 65th session. We note with satisfaction that this year the Commission made a significant progress on a number of issues.

We would like to begin this statement with the topic of "**Immunity of State officials from foreign criminal jurisdiction"**. We believe this is one of the key topics on the ILC Agenda. It can be seen from the utmost interest of States to this topic demonstrated during the meetings of the Sixth Commit12(e)6.72126(12 0 Td [640819(e)-8

whether to examine this topic from the viewpoint of codification or progressive development. The development of the topic *de lege ferenda* should it take place must be done with extreme caution. Indeed it should start with codification of existing norms of the international law and then as the gray areas and insufficiently settled issues are encountered the progressive development could be resorted to on the basis of consensus. We think that this approach already enjoys significant support in this Committee. As regards the areas of progressive development, something could be added in terms of procedural aspects of invoking or waiving immunity and similar issues.

It seems that in the area of substantive issues of immunity the conditions are not ripe for progressive development. Thus, we do not see grounds in international law in order to come to the conclusion that there are exceptions from immunities of state officials.

In this connection we have concerns with paragraph 7 (c) of the Second Report on the principles and values of international law relating to this topic and considered as an analytical paper. We don't think that such parallels should be drawn in the context of this topic. This will only complicate the elaboration by the Commission of an utmost clear document on this topic that we expect from it.

We believe that the issue of immunity from international criminal jurisdiction should not be encompassed within this topic. There are differences of principle here – immunity from foreign jurisdiction derives from the principle of sovereignty of states, therefore, the exercise of this jurisdiction under a general rule requires consent of a State of the official. However, in case of international jurisdiction the States voluntarily agree from the very beginning, usually by way of concluding an international treaty, to international jurisdiction and relevant rules pertaining to immunity. Moreover these rules may vary in depending on a given case. In some cases it is a matter of implementation of the Security Council's decisions, which also is hardly related to the institution of immunity as such.

We support the idea of distinguishing between immunity *ratione personae* and immunity *ratione materiae*. This difference is widely recognized in the doctrine and is reflected in the judicial practice.

Further on, let me make some comments on the draft articles provisionally adopted by the Commission.

(a) The scope of the topic

In principle we agree with the content of this article. In paragraph 1 of Article 1 we noticed a footnote stating that the term "officials" will be subject to further consideration. The definition of the term "state official" acquires a particular importance in the sphere of *ratione materiae* immunity. We believe however that it

ranking officials depending on circumstances may also fit into the criteria of the "troika". The Commission in its Report cited the examples of national practice, which confirms the possibility and appropriateness of such an extension. In particular, immunity was extended to the Ministers of Defense (the case

In conclusion we would like to touch upon new topics that the Commission decided to include in its current and long-term program of work.

The Russian Federation already last year expressed doubts regarding the idea of developing topic "**Protection of atmosphere"** by the Commission. Our concerns remain with regard to the decision of the Commission to include this topic in its programme of work.

The restrictions put on this topic by the Commission, on the one hand, do not alleviate the problems that might arise in its consideration (we have pointed them out on a number of occasions) and, on the other hand, narrow the subject-matter of the topic to such extent that doubts arise as to whether there is any point in studying the theme in its present form.

The problem of the protection of atmosphere is complex. It includes norms of the international air law as well as norms of the international environmental law. In each of these branches of law the work is underway on eliminating gaps and creating flexible legal norms, including in areas that have been identified by the Commission as not being subject to consideration under the topic of "Protection of atmosphere". However, codification attempts in these areas will inevitably interfere with these processes and will undermine their integrity.

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