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STATEMENT

by the representative of the Russian Federation
in the Sixth Committee of the 71st UN GA session on agenda item
35 H S R U W R I W K H , Q W H U S D O W T H E W O R L D O F I T S D E & R V P L R Q
(Topics:)

Mr. Chairman,

We have reviewed with great interest the new report by Ms. Escobar Hernandez on Immunity of State R I I L F L D O V I U R P I R U H L J Q and studied the summary of preliminary debate in the Commission. We thank Escobar Hernandez for serious food for thought ideas presented in the report.

We note with great regret that at the time of its consideration the report was not translated into all UN official languages against the existing rules. Naturally, this affected the results of the Commission

The issue of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction (further on exceptions) is not an easy task taking into account among other things an increasingly heated political debate on personal responsibility for international crimes. Therefore, as we have already repeatedly stated, this topic should be examined with caution. We are glad that the call for caution is reflected in the opinions of the members of the Commission as it follows from its report.

The fifth report of the Special Rapporteur proposes the Commission to use quite a specific approach to the issue of exceptions to immunity. The report attempts to present exceptions as an established rule suitable for codification. However, this approach is

to recall that the issue of violation of the immunity of State and its officials for the last years has become repeatedly the subject of litigations in the International Court of Justice the fact that only proves the sensitivity and conflict-prone character of this topic.

The desire to eradicate impunity for grave international crimes is a noble goal but it should not be used as an instrument for manipulating the rules of international law that constitute the foundation of contemporary international relations.

The immunity does not at all exclude responsibility. The immunity is not equal to impunity. The prosecution of the perpetrators of the most grave international crimes should be carried out for example by the international judicial bodies (common or specially established). An official can be put on trial in a court of foreign State if his State waives the immunity that this official had enjoyed. Naturally, there are no limitations whatsoever to criminally prosecute the official in his own State.

Under these circumstances where we have quite traditional means of prosecuting the officials who perpetrated grave crimes, the introduction of exceptions to immunity from foreign jurisdiction

Juan Manuel Gomez Robledo for their work. This topic has a great practical significance which has been confirmed in the comments of the States

From the methodological viewpoint the work of the Commission this year has been slightly complicated by the need to examine at the request of States some rather different levels of provisional application. We will try to make briefly some points on the issues that are the most important in our view

Taking into account the consistent position of the Commission that the provisional application creates the same legal consequences as the case of the entry of the treaty into force we proceed from the understanding that nothing prevents the State from making reservations at the time

The draft guidelines preliminarily adopted by the Commission to date have been quite consistent with the existing practice. We should note however that most of the presented draft guidelines have been of a rather general character and almost none have added any specifics yet to the 1969 Vienna Convention on the Law of Treaties.

However, the examples provided in the report and during the debate allow us to make a conclusion that there are some urgent issues in this area which require additional reflection and further examination. In particular, we believe that the restrictive clause and the principles of its formulation and expression are among such issues. We should like to suggest that the Commission should focus its future work precisely on such aspects of the provisional application.

Perhaps, it would be also useful to study the specifics of the provisional application regime for the treaties of different nature (bilateral, multilateral and multilateral with limited participation).

We welcome the intent of the Special Rapporteur to prepare the model provisions of provisional application. We expect that during this work it would be possible to a certain extent to systematize the relevant practice and its relevant benchmarks.

Thank you, Mr. Chairman.