



SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

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ILC Cluster II

Chps: VI
Protection of the environment in relation to armed conflicts

Chapter: VIII
Immunity of State officials from foreign criminal jurisdiction

Chapter: X
Sea-level rise in relation to international law

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Mr. Chairperson,

With regard to the topic of “**Immunity of State Officials from Foreign Criminal Jurisdiction**” Israel would like, at the outset, to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her seventh report on this topic.

Israel attaches great importance to ensuring that perpetrators of crimes are brought to justice, and supports international efforts to fight crime and combat impunity effectively. At the same time, the longstanding and fundamental rules on immunity of State officials from foreign criminal jurisdiction are firmly established in the international legal system, and for good reason.

immunity, we note that under customary international law the category of State officials who enjoy such immunity is broader, and largely depends on the particular nature of their functions. The case-law of the International Court of Justice clearly supports this position. In Israel's view, the Commission should, thus, reconsider its position on the matter, particularly given the response by States thus far.

With respect to Draft Article 7 which proposes exceptions to the applicability of immunity *ratione materiae*, Israel shares the view echoed by other States, that this Draft Article reflects neither the international law in force, nor any purported "trend" in this direction. Israel is thus of the view that Draft Article 7 should be completely altered if not deleted.

Mr. Chairperson,

Without prejudice to this position, Israel discourages the ILC from proceeding with a discussion of exceptions to immunity, but, in any event, should it, nonetheless, decide to do so, it would merely be an attempt to propose *lex ferenda*. Furthermore, to the extent that this discussion is continued, it ought to be held in tandem with the discussion of safeguards, and not separately from Draft Article

Special Rapporteur, according to which the *purpose* of Draft Article 8 is to determine that immunity must be considered at *the earliest* possible time. However, the text of Draft Article 8 as proposed by the Special Rapporteur does

between States relevant to issues of complementarity or subsidiarity should be conducted

made known to the forum State, so that they can be taken into account before any decision on immunity is made by the forum State.

Mr. Chairperson,

Israel cannot accept the underlying assumption expressed in the Special Rapporteur's proposed **Draft** Article 10, that only if the State of the official invokes immunity *ratione materiae*, then the question of immunity should be considered. It is Israel's position that there should be a presumption of immunity in the case of foreign State officials, unless the State of the official clarifies the lack of immunity, or waives immunity -- expressly and in writing -- or until a clear determination of its absence is ~~made~~ made by the forum State, so that

immunity as soon as it is aware of the status of the foreign State official, or the nature of the acts involved.

Israel also agrees with the view expressed by some Commission members that there should be no obligation incumbent upon the State of the foreign official to invoke immunity *immediately*.

Israel, moreover, shares the concerns expressed by members of the Commission with regard to proposed Draft Article 11, paragraph (4), as it could be very difficult to – and I quote -- “deduce clearly and unequivocally” from a treaty a *de facto* waiver of immunity. In Israel’s view, this subparagraph should be deleted as it could lead to ambiguous and unwelcome outcomes, in particular because the interpretation of such provisions in treaties could be different in various States.

Mr. Chairperson,

Moving to the Special Rapporteur’s proposed Draft Article 13, Israel welcomes the efforts to advance the mutual cooperation and exchange of information between the forum State and the State of the official. Israel believes that direct dialogue between high levels in the respective States is of crucial importance to balance most efficiently the interests of preventing impunity on the one hand, and avoiding political abuse of legal proceedings and the infringement of the longstanding and fundamental legal principle of immunity of State officials enshrined in customary international law, on the other.

With regard to proposed Draft Article 13, paragraph (2), it is Israel’s view that an exchange of information through all existing channels between the respective States – including diplomatic channels and requests for mutual legal assistance – should be possible at all times, in order to encourage and facilitate the easy transfer of information at the earliest stage of the proceedings.

