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## STATEMENT OF THE CHAIR OF THE INTERNATIONAL LAW COMMISSION,

## MR. MAHMOUD HMOUD

25 October 2021

Madam Chair,

These have been trying times. It is pleasant to have a semblance of normalcy and to be having a debate even in these still precarious circumstances. International law holds us together even in times of peril. I bring with me warm greetings from the International Law Commission, which finally managed to convene its seventy-second session in a hybrid setting. On behalf of the Commission, I wish to thank the Sixth Committee for providing the necessary support since the Commission last met in 2019, and to you, Madam Chair, for the kind and generous sentiments of appreciation addressed to the International Law Commission. It is a singular honour for me to be representing the Commission and I am proud that you, a distinguished daughter from our Arab and Middle Eastern region, are chairing the Sixth Committee. The Commission and the Sixth Committee have a shared interest in the progressive development of international law, and its codification, that goes far back to the founding of the United Nations. The imprimatur of the Sixth Committee, working through the various processes at its disposal, serves as the final seal of approval for any instrument it negotiates based on drafts prepared by the Commission. Please accept the warm felicitations, and the best wishes, to you all, from the Commission for successful deliberations on the occasion of the current session of the Sixth Committee. Our two bodies share a common objective. The interaction that the Commission has with the Sixth Committee during the debate on the annual report, as well as the interactive dialogue, provides a useful framework for an exchange of views between our two bodies. During the coming days, my colleagues some of whom are here and others observing from afar look forward to a useful exchange of views, and to hearing your comments.

Madam Chair,

The pandemic is still with us and is having its toll globally. It is in such challenging circumstances that the Commission was convened. The Commission is most grateful to those many within the United Nations, here in New York, and in Geneva, as well as the Commission's host, Switzerland, for working tirelessly to ensure that the necessary arrangements and measures

are in place for the Commission to meet in a safe environment. We witnessed first hand international cooperation at work. It was not easy, but it was worth it. The fact that the session was held in a hybrid session, on a platform with easy functionality, was a difference maker. In the course of its deliberations the Commission made substantial progress in its work,. In making this statement today, I intend to follow the example of my immediate predecessor Pavel !turma who introduced the report of the Commission in one single intervention. Accordingly, the present statement covers the entirety of the Commission at its seventy-second session.

Madam Chair,

The overall achievements of the Commission are summarised in Chapter II. The Commission concluded the second reading of two topics: The "Protection of the atmosphere", concerning which the Commission adopted an entire set of draft guidelines comprising a draft preamble and 12 draft guidelines, together with commentaries thereto; and "Provisional application of treaties," in relation to which it adopted an entire Guide, comprising 12 draft guidelines and a draft annex, containing examples of provisions on provisional application of treaties, together with commentaries thereto.

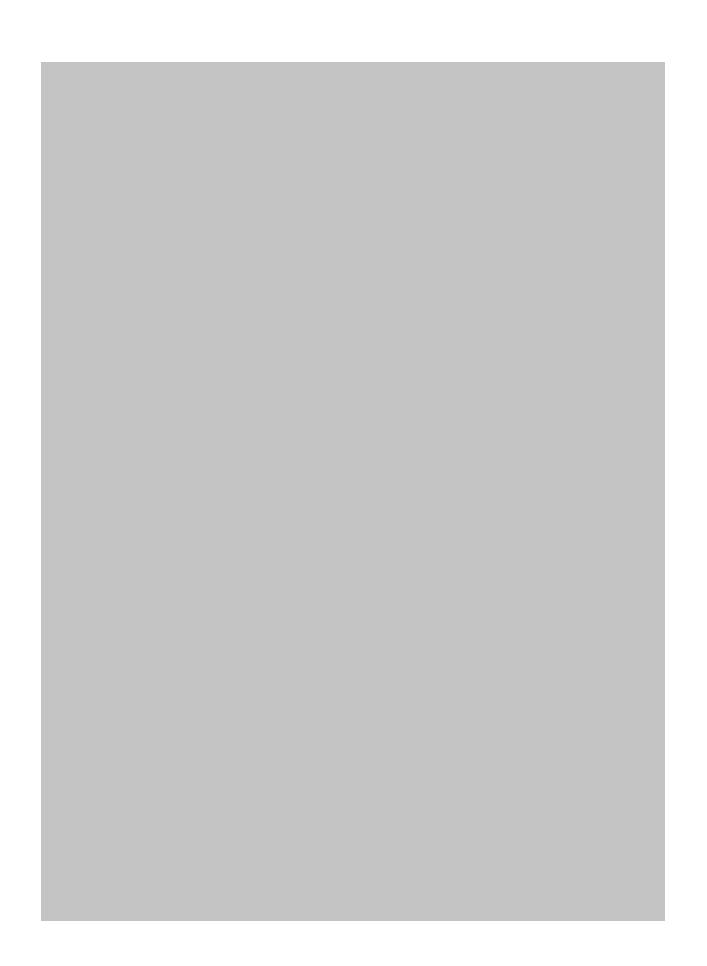
On the topic, "Immunity of State officials from foreign criminal jurisdiction, with the adoption of 6 draft w2ieomme did

exchanges of information with the other bodies, even though it was able to have an informal exchange of views with the International Committee of the Red Cross on 15 July 2021. For two years running, the Commission was unable, and ruefully, to host the International Law Seminar. As you know, this is an important component of the Commission's work in the teaching, study, dissemination and wider appreciation of international law. The Commission decided that its seventy-third session next year would be held in Geneva from 18 April to 3 June and from 4 July to 5 August 2022. It is hoped the circumstances will be much more congenial to undertake some of these other activities.

Before moving on from this introductory part, allow me to acknowledge the invaluable assistance of the Codification Division of the Office of Legal Affairs in the technical and substantive servicing of the Commission. The success of the hybrid session owes in most part to the excellent preparations of our Secretariat. The Secretariat is in every much an integral part of the working methods of the Commission, and this is not a cliche. Permit me also to respectfully note, sadly. of the passing of two of our distinguished former members who walked the corridors of the *Palais des Nations* and left an indelible mark in their contributions to work of the Commission and to international law. On 3 September 2020, a memorial meeting was convened in honour of the memory of Judge Alexander Yankov, former Chair of the Commission and Special Rapporteur for the topic "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier", while on 22 July 2021, a memorial meeting was convened in honour of the memory of Judge James Crawford, Special Rapporteur for the alegacy to the academy, which will still live on.

Madam Chair,

Permit me now to delve a bit more on the substantive output of the Commission. I will start with the topic "Protection of the atmosphere



The other topic on which the Commission completed a second reading is "**Provisional application of treaties**," which is addressed in **Chapter V** of the report. As earlier mentioned, the Commission adopted on second reading the Guide to Provisional Application of Treaties, which comprises of 12 draft guidelines, with commentaries thereto, and an annex containing examples of provisions on provisional application of treaties.

The Commission proceeded on the basis of the sixth report of the Special Rapporteur (A/ CN.4/738), as well as comments and observations received from Governments and international

In accordance with article 23 of its statute, the Commission recommended to the General Assembly to take note of the Guide to Provisional Application of Treaties and to encourage its widest possible dissemination, to commend the Guide, and the commentaries thereto, to the attention of States and international organizations, and to request that the Secretary-General prepare a volume of the *United Nations Legislative Series* compiling the practice of States and international organization of treaties, as furnished by them over the years, together with other materials relevant to the topic.

Please once more join the Commission in paying tribute to the Special Rapporteur, Juan Manuel

Draft articles 8 to 12 address questions concerning procedural provisions and safeguar seek to address sequentially the various steps that need to be taken, procedurally, to face eventual determination of immunity, starting with the process of examination, notibe invocation and possible waiver, and requests for information.

Allow me to highlight an issue that the Commission seeks particular comment Governments which relates to paragraph 5 of draft article 11, according to which wa immunity once manifested is irrevocable. There were various views expressed Commission as the commentary on the paragraph shows. However, given possible exceptional situations where, for example, new relevant facts could be discovered or w exceptional or fundamental change occurs, for instance, regarding the human rights situa potential forum State, it was considered that views of member States were merited, as to there could be exceptions to irrevocability of waiver, despite the certainty that the prop presents.

The hope of the Commission is to complete the Þrst reading next year. The Commission still welcome any information from Governments Þrst requested in 2019, preferably December 2021 on manuals, guidelines, protocols or operational instructions addressed t of Þcials and bodies that are competent to take any decision that may affect foreign of Þc their immunity from criminal jurisdiction in the territory of the forum State.

Madam Chair,

I now turn to the topic Succession of States in respect of State responsibility addressed chapter VII of the report. The topic, on the Commission Õs agenda since 2017, aims at c the interaction and ÞII possible gaps between the law of succession of States and the responsibility of States for internationally wrongful acts, while bearing in mind the importal maintaining consistency with the previous work of the Commission on various aspects of areas, including the 1978 Vienna Convention on Succession of States in respect of Trea 1983 Vienna Convention on Succession of States in respect of State Property, Archi Debts; the 1999 Articles on nationality of natural persons in relation to the succession o (annexed to General Assembly resolution 55/153 of 12 December 2000); and the 2001