



SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

Adv. S505 ~~S5~~

Commission

on the work of its seventy-ninth session

Cluster I

79 Agenda Item

22 October 2024

Mr. Chair,

Regarding the topic of

Israel congratulates Professor Claudio Grossman Guiloff on his appointment as Special Rapporteur, and thanks him for his first 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, Israel emphasizes the importance of the firmly established, fundamental rules on immunity of State officials from foreign criminal jurisdiction. These rules, which are central to both international law and international relations, were developed to protect the foundational principles of State sovereignty and equality; to prevent international friction and political abuse of legal proceedings; and to allow State officials to perform their duties without impediment.

Mr. Chair,

Israel welcomes the approach taken by the Special Rapporteur in his report - that the function of the Commission on second reading is to carefully assess whether a need exists to modify the Draft Articles and their commentaries based on the observations received, particularly in cases where significant divergences are evident.

Due to the importance of this topic and the divergent views among States on several core issues the Draft Articles currently address, Israel believes that during the second reading the Commission should take all the time necessary to address the substantial controversies, so as to ensure an effective output that can be generally endorsed by States.

Mr. Chair,

Israel wishes, once again, to make particular mention of Draft Article 7 and its related annexes, proposing exceptions to immunity *in ratione materiae*. Israel shares the view voiced by other States, and by some members of the Commission that this Draft Article does not reflect the current state

in Israel

development of the law. Since the adoption of Draft Article 7, this approach has been confirmed by a number of domestic courts, which held that no such exceptions apply when officials acted in the course of the performance of their official duties. Israel thus reiterates its position that Draft Article 7 is not based on sufficient and relevant state practice or *opinio juris*, and should be deleted.

Proclaiming exceptions to immunity that States have not willingly endorsed by treaty or through widespread practice *opinio juris* risks creating severe tensions among States. Moreover, immunity of State officials would be violated from the very process of examining the applicability of exceptions. The proposed exceptions may also be abused for political purposes.

Draft Articles do not, and cannot, sufficiently overcome the myriad of difficulties that Draft Article 7 raises.

Mr. Chair,

Israel once again asks the Commission to reconsider its position on the issue of immunity *ratione personae* discussed in Draft Articles 3 and 4, the Head of State, Head of Government and Minister of Foreign Affairs enjoy immunity *ratione personae* Israel, like a number of other states, notes that under customary international law the category of State officials who enjoy such immunity is in fact broader.

In his report, the Special Rapporteur considers that legal grounds have been provided to justify inclusion of other persons in the category of persons entitled to immunity *ratione personae* Israel recalls that this notion was established in the *Arrest Warrant Case* and recalled in the *case concerning Certain Questions of Mutual Assistance in Criminal Matters*. The non-exhaustive nature of the list of persons who enjoy immunity *ratione personae* recognizing that the rationale for immunity is associated with the function the State official fulfills, and not only the title of their office.

This view is also reflected in decisions of national courts, and has been

International relations have evolved in such a way that high-ranking State officials outside the troika – for example, Ministers of Defense and Ministers of International Trade – have become increasingly involved in international fora and make frequent trips outside their national territory. Immunity ratione personae should be granted to State officials based on the character of their positions and the necessity of their functions to the maintenance of international relations and international order.

Israel emphasizes that, in practice, States holding this view would not pursue legal proceedings against a broader range of officials that meet this criterion. Decisions made in this regard, while not necessarily broadcast or accessible to the public, constitute an important element of State practice.

Israel believes that Draft Articles 3 and 4 should include a flexible criterion for immunity ratione personae based on the functions the officials perform.

In this context, Israel wishes to clarify that special mi(es)8(l)-3()-176(mi)5((es)

Mr. Chair,

Israel welcomes the clarification in article 1(3)(b) regarding binding

In any case, due to the sensitivity of this topic, the practice of the ILC to reach consensus should be more rigorously upheld during the second reading. Similarly, the Commission should be mindful of the need to ensure that any outcome on this topic is broadly supported by States.

Rushing the second reading without addressing the significant concerns raised by many member states over the years could seriously risk undermining the whole project, as it will in all probability lead to a contested outcome that would further fragment international law, rather than further developing it.

As previously illustrated, adoption by the ILC of highly contested projects without properly addressing fundamental concerns leads to further disagreement in the Sixth Committee, in contrast to its longstanding history of consensus-driven resolutions.

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observation in its report, and our intention to submit further comments in writing.

Mr. Chair,

Regarding the topic -

Israel reiterates its recognition of the vital importance of this topic to the entire international community. We strongly support the global efforts aimed at tackling the potential harmful impacts of this alarming phenomenon.

on the potential legal challenges and implications of sea level rise. Israel shares the general support expressed in the Study Group, in favor of the continuity of statehood.

We also share the view that sea level rise poses a serious threat to low-lying coastal states, archipelagic states, small island states and small island developing states, whose land surface may become totally or partially submerged and rendered uninhabitable.

The issues defined by the Study Group on this topic pose challenging questions related to fundamental principles of international law.

