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(translation)

Statement by Mr. Li Linlin

Chinese Delegate

At the Sixth Committee

of the 67th Session of the UN General Assembly

On Agenda Item 79

Report of the International Law Commission

on the Work of its 64th Session

(Part III: Chapters VI-XI)

New York, 5 November 2012

Mr. Chairman:

Before I speak on the topic of immunity of State officials from foreign criminal jurisdiction, allow me first to congratulate Ms. Concepción Escobar Hernández on her appointment as the new Special Rapporteur for this topic and the first female Special Rapporteur of the ILC. The preliminary report submitted by Ms. Hernández at the 64th session gave a good summary of the work done so far on this topic and highlighted the main issues that need to be studied. The 5-year program of work has clear objectives and is precise and practical. I am confident that under her guidance, the Commission will continue to make progress in its consideration of this topic. I also wish to thank the former Rapporteur, Mr. Roman Anatolevich Kolodkin. The three reports he submitted have reflected the current state of the development of international law and international practice in this field, thus laying a solid foundation for our consideration of this topic. I hope that in her research and studies, Ms. Hernández will build on the work done by Mr. Kolodkin. This will also help save resources and enhance efficiency.

Mr. Chairman,

The Special Rapporteur proposed in her preliminary report to carry out discussions in a systematic, highlighted and staged manner on various substantive issues under this topic, through review of state practices, theories as well as national and international case laws. We agree to this working method.

On whether the study of this topic should focus on codification or development of international law, the Chinese delegation believes that the issue of immunity is extremely complex and sensitive since it touches upon basic principles of international relations and international law. The Commission should therefore focus its work on going over and summing up the existing practices and rules of customary international law concerning

immunity of State officials from foreign criminal jurisdiction in order to provide clear guidance to all parties. It is ill advised to jump to rule-setting. In addition, the Commission's discussions should be confined to immunity of State officials from criminal jurisdiction of foreign courts and stay clear of the question of immunity of State officials from international criminal judicial institutions.

Mr. Chairman,

With regard to the substantive issues designated by the Special Rapporteur as the focus of work in the next stage, I wish to make the following preliminary observations:

1. On the question of whether there should be exceptions to immunity of State officials, China believes that, first of all, immunity as an issue is of the nature of procedure. Although the international community has established ethnic cleansing and crimes against humanity as international crimes, customary international law neither excludes the immunity of State officials from foreign jurisdiction, nor recognizes any exceptions to that immunity. Therefore, procedural justice embodied in immunity can not be sacrificed for the sake of substantive justice against impunity. This is an intrinsic requirement for the rule of law.

Second, the immunity of State officials is not necessarily related to the unlawfulness of acts. The gravity of the crime will not affect its "official character".

Furthermore, the immunity of State officials from foreign criminal jurisdiction does not exempt State officials from substantive responsibilities that they should assume. The rules of immunity of State officials neither lead to international crimes nor contribute to impunity. Measures proposed by the ICJ in the Arrest Warrant case, such as prosecution in home country, waiver of immunity, prosecution after the end of terms of office and prosecution by international criminal judicial institutions, can be used to bring concerned officials to justice while upholding rules of immunity.

2. On the scope of immunity *ratione personae*, Mr. Chairman, there is a general consensus in international community that heads of state, heads of government and foreign ministers should be entitled to immunity *ratione personae* since they need to perform public functions as State representatives. For the same reason, it should also be accorded to other senior officials such as heads of parliament, vice prime ministers and government ministers given their increasing participation in international exchanges to perform functions as State representatives. This view gained indirect confirmation in ICJ's Arrest Warrant case Judgment. The Commission should go along with this trend and strive to lay down a criterion as a guide to national courts when they decide on a case-by-case basis if a particular official is entitled to immunity *ratione personae*.

Mr. Chairman, the Immunity of State officials from foreign Jurisdiction is a fundamental principle of international law, which safeguards the proper function of officials in foreign countries and relates to the development of international intercourse and stability of international relations. The Commission's work on this topic has profound impact. We hope the Commission continues to consider this topic as its priority in accordance with the GA Resolutions and strive to complete its work in this five year term.

Thank you, Mr. Chairman.