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(translation)

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At the 68th Session of the UN General Assembly

On Agenda Item 81

Report of the 65th Session of the International Law Commission (Part 1)

New York, 30 October 2013

Mr. Chairman,

Since this is the first time I am taking the floor as the representative of China in the 6th Committee, please allow me to congratulate you on your election as the Chairman of the Committee. I am convinced that under your guidance, the current session of the Committee will come to a successful conclusion. I also wish to pay tribute to Mr. Bernd Niehaus, whose succinct introduction of the report of the 65th session of the International Law Commission provides a sound basis for the consideration of the agenda item by our Committee.

Before preceding further, I must pay tribute and express gratitude to Mr. Mikulka who retired not long ago, for his outstanding contribution over the years to the smooth functioning of our Committee, first as a member of the ILC between 1992 and 1998 and then as the Director of the Codification Division of the UNOLA until the end of 2012.

Mr. Chairman,

The 65th session of the ILC is very fruitful. For the first time, the Commission deliberated on the topic of formation and evidence of customary international law and the topic of provisional application of treaties. Discussions on immunity of state officials from foreign criminal jurisdiction and protection of persons in the event of disasters progressed well and new draft articles were adopted on both topics. In addition, the Commission adopted five draft conclusions together with commentaries thereto on subsequent agreements and subsequent practice in relation to interpretation of treaties. Some topics were taken forward at the level of working group and

study group like the topic of the obligation to extradite or prosecute (*aut dedere aut judicare*) and the most-favored-nations clause. The Commission also held initial informal consultations on the new topic of protection of the environment in relation to armed conflict. The Chinese delegation is pleased with the progress achieved and will as always support the work of the Commission. We are willing to offer information on state practice in relation to items under consideration by the Commission. We encourage the Commission to strengthen communication and cooperation with other bodies in the field of international law.

Meanwhile, my delegation hopes that the Commission will continue to optimize its working methods and improve its efficiency. In the selection of new topics, we hope the Commission will give more consideration to the needs of the international community, pay great attention to the views of the Sixth Committee on its work, prioritize topics that may provide practical guidance to the international community, treat the inclusion of highly academic and technical topics with caution and continue to play an important role in the codification and progressive development of international law.

Mr. Chairman,

On behalf of the Chinese delegation, I wish to make the following comments on the agenda items of “Immunity of State Officials from Foreign Criminal Jurisdiction”:

In her second report submitted to the 65th session, Special Rapporteur Ms. Hernandez built upon the “structured and systematic methodological approaches” set out in her initial report, addressed the progressive

development of *lege ferenda* with caution and made an in-depth analysis of such general issues as methodology and concepts as well as the important dimension of *ratione personae*. The draft articles proposed are succinct and characterized by clear logic and impartiality, to which China expresses its appreciation. The Special Rapporteur rightly defined the scope of the topic as immunity of state officials from criminal jurisdiction of another state, thus excluding immunity of state officials from jurisdiction of international criminal tribunals and immunity of such officials as diplomatic agents, consulate officials covered under special rules. The Commission eventually adopted the three draft articles on scope and *ratione personae* following their consideration in the Drafting Committee.

On persons enjoying immunity *ratione personae*, we are of the view that while there is a general common understanding among the international community that heads of state, heads of government and foreign ministers (troika) enjoy immunity *ratione personae*, international practice does not exclude the possibility of the same kind of immunity being granted to some other high-level officials. In its judgments on the Arrest Warrant case and *Djibouti v. France*, the International Court of Justice did not in any way limit immunity *ratione personae* to the troika only. In the jurisprudence of some domestic jurisdictions, this immunity is granted to such high level officials as ministers of commerce and ministers of defense. Statements by delegations at the last session of the 6th Committee showed that more countries were open-minded about it and did not propose this particular limit.

Mr. Chairman,

The Chinese delegation takes note of the inclusion of the topic of "Protection of the atmosphere" in the program of work. As pointed out by the Chinese delegation in the previous sessions of the 6th Committee, this topic is of the highly technical nature, and many applicable international conventions already exist. We do not deem it a suitable topic for the program of work of the Commission. The Chinese delegation recalls that, in order to accommodate the concerns from various states, the Commission included the topic in its program on the understanding as follows: (a) the work on the topic will proceed in a manner so as not to interfere with the relevant political negotiations; (b) the topic will not deal with specific substances; (c) questions relating to outer space, including its delimitation, are not part of the topic; (d) the outcome of the work on the topic will be draft guidelines. Given above, the Chinese side is still cautious about the inclusion of the topic in the program. The Chinese delegation will follow the development of the topic in the Commission.

As to the topic "Crimes against humanity" newly added in the long-term program of work, the Chinese delegation holds the view that, taking into consideration the complexity and sensitivity of this topic, the Commission should deal with it in a prudent manner and avoid any pre-determined results before wide consensus is reached by states.

Thank you, Mr. Chairman.