



CZECH REPUBLIC

Permanent Mission of the Czech Republic to the United Nations

Check Against Delivery

68th Session of the
General Assembly

Agenda Item 81

**Report of the ILC:
Immunity of State Officials from Foreign Criminal Jurisdiction
Programme of Work**

Statement by

Mr. Petr Válek

Director of International Law Department,
Ministry of Foreign Affairs of the Czech Republic

New York, October 29, 2013

Mr. Chairman,

In the present statement concerning the report of the International Law Commission the delegation of the Czech Republic would like to focus on the topic of „Immunity of state officials from foreign criminal jurisdiction“. The Czech Republic appreciates both reports presented up to now by the current Special Rapporteur for this topic, Professor Concepción Escobar Hernández, which present thorough overview of the topic and its contentious aspects. We are looking forward to the next report which should focus on the normative elements of immunity *ratione materiae*, including the specification of the terms „official“ and „official acts“. The Czech Republic will endeavour to provide the Commission with relevant information on its practice concerning this topic.

In this part of the statement, the delegation of the Czech Republic would like to comment on three draft articles, which were provisionally adopted by the International Law Commission at this year's session and deal with the scope of the draft articles and immunity *ratione personae*. In general, we welcome both the structure and the content of these articles. In our opinion, these three articles properly captured the scope of the whole topic, the basic characteristics of the immunity of state officials, as well as the scope of the immunity *ratione personae*. At the same time, we would like to present a few suggestions for specification of some aspects of the provisionally adopted draft articles.

As far as special regimes unaffected by the articles are concerned, it might be useful to elaborate, perhaps in a commentary to the relevant draft article, on a distinction between the „absolute“ immunity *ratione personae*, dealt with in the draft articles, and the immunity *ratione personae* enjoyed by State officials, including high-ranking officials, while on special missions abroad. Even if only a relatively small number of States have become party to the United Nations Convention on Special Missions, the customary law regime reflecting the rules of the Convention is relevant for vast majority of official visits to foreign states, including the visits by the high-ranking State officials. In this regard it is to be noted that the „full“ or „absolute“ immunity *ratione personae* covered by the draft articles should protect the enumerated State officials also when they are on private visits abroad or even against the exercise of universal jurisdiction when they dwell in their home state, whereas the special regime of immunity *ratione personae* provided for by the regime of special missions protects State officials only when they „represent their State abroad in the framework of their substantive duties“, as it is mentioned in the commentary to draft article 3. This difference in the scope of various regimes of immunity *ratione personae* could be elucidated in the text of the appropriate draft article or in a commentary to it.

As far as the provisionally adopted article 3 is concerned, the delegation of the Czech Republic agrees with its text, according to which only Heads of State, Heads of Government and Ministers for Foreign Affairs enjoy „absolute“ immunity *ratione personae* from the exercise of criminal jurisdiction, while in office. The delegation of the Czech Republic is aware of the arguments suggesting that the Ministers for Foreign Affairs should not be included into this category, since they, unlike the Heads of State or Heads of Government, do not embody the supreme authority of the state and their conduct of international relations may be covered by the immunity of the members of special missions. In addition, as the Commission mentions in its commentary to this article, some sources, such as the United Nations Convention on Special Missions or the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, differentiate between the Heads of State on the one hand, and the Heads of Government, the Ministers of Foreign Affairs and other

persons of high rank on the other. The limitation of the „absolute“ immunity *ratione personae* to the Heads of State and Government thus, in our opinion, could be given further consideration in the future work of the Commission as well. At the same time, the delegation of the Czech Republic is aware of and regards as relevant the fact that the troika, enunciated in article 3, is expressly and consistently mentioned in various authoritative sources of international law and has the closest connection with the representative functions of a State, which is protected by the absolute immunity *ratione personae* dealt with in the draft articles. At the same time, the delegation of the Czech Republic shares the view of the Commission that high-ranking officials other than the Heads of State and Government and Ministers of Foreign Affairs are not covered by the immunity *ratione personae* for purposes of the present draft articles; these other high-ranking officials enjoy immunity from foreign criminal jurisdiction based on the rules relating to special missions, when they are on official visits abroad. Thus, provisionally adopted draft article 3 seems to strike, in our opinion, appropriate balance between sovereign equality of States and respect for the rule of law on the international level.

In addition, having regard to the similarities between the special regimes of immunity *ratione personae* of diplomatic agents and members of special missions on the one hand and the „absolute“ immunities *ratione personae* covered by the draft articles, it seems that the question of immunities accorded to the members of the families of the troika, as specified in provisionally adopted article 3, should be dealt with by the Commission within the framework of this topic, either in the draft articles or in a commentary.

Finally, the delegation of the Czech Republic would like to make a few short comments concerning the programme of work and long-term programme of work of the Commission. In its 2006 report, the Commission agreed to include in its long-term programme of work the topic called „Jurisdictional immunity of international organizations“. My delegation is of the opinion that this topic is becoming increasingly important and practically relevant, having regard, *inter alia*, to more intense economic and other activities of international organizations, as well as to more frequent cases brought unsuccessfully against the international organizations before national courts. In addition, it seems that, in comparison to other areas of immunities provided under international law, such as the immunities of States or diplomatic representatives, there is relative scarcity of materials concerning the immunities of international organizations, including the commentaries or *travaux préparatoires* to existing conventions. As mentioned in the Commission's report, this suggested topic could cover issues concerning the existence of rules of general international law on the immunities of international organizations, the role of alternative means of settling disputes and avoidance of the denial of justice or elucidating some aspects of the immunities of international organizations provided for in the existing international conventions. Therefore, the delegation of the Czech Republic suggests that the Commission considers the appropriateness of the inclusion of this topic in its programme of work.

Regarding this year's inclusion of the new topic „Protection of the atmosphere“ on the programme of work of the Commission, we appreciate the understanding on the limiting conditions concerning this topic, in particular that the work on this topic should not interfere with relevant political negotiations taking place in different fora.

As far as the long-term programme of work is concerned, the Czech Republic welcomes the inclusion of the topic „Crimes against humanity“ and recommends that the Commission proceeds with the topic during its sixty-sixth session. My delegation supports Prof. Sean D. Murphy's view on the proposed key elements and outcome of this topic.

Thank you, Mr. Chairman.