

ISRAEL

69th Session of the General Assembly

CHECK AGAINST DELIVERY

Statement by:

ISRAEL
Ms. Sarah Weizman
Director, International Law Department
Ministry of Foreign Affairs

Sixth Committee

Agenda Item 78

**Report of the International Law Commission on the Work
of its Sixty-Sixth Session**

31 October 2014

United Nations

New York

Mr. Chairman,

Allow us to express our delegation's appreciation of the work of the ILC and to address the topics currently before the committee.

With regards to the topic of "**Protection of the atmosphere**", Israel commends the Special Rapporteur, Mr. Shinya Murase, for his valuable work on the first report which focuses upon introducing the subject, delineating the scope of work and identifying basic concepts in this field.

As a matter of principle, Israel ascribes great importance to the protection of the atmosphere. In 2008, the Israeli Parliament passed the 'Clean Air' Law. The purpose of this law is to facilitate improvements in air quality and to prevent and reduce air pollution in order to protect human life, safeguard their health, enhance quality of life and protect the environment. In addition to the aforementioned law, our government has worked to regulate emissions from stationary sources such as factories and power plants and conditions the grant of business licenses upon compliance with these standards.

With respect to the first report, we share the view that the issue of atmosphere protection is an important issue in light of the global problems of air pollution and climate change that we currently face. Accordingly, we welcome the decision of the Special Rapporteur to focus his work on identifying already existing and emerging principles used in the sphere of atmospheric protection. We also agree with the Special Rapporteur that non-binding draft guidelines would be the preferred approach to address this topic at this initial stage.

In light of the complexity of the topic, it is our position that these issues should be addressed with caution in order not to interfere with ongoing and future negotiations of States regarding related international treaties.

In this regard, we would like to echo the concerns raised by Commission's members regarding the Special Rapporteur's reliance on non-governmental actors and scholarly works and stress that only State practice should be looked upon for the purpose of identifying international customary law.

Mr. Chairman,

With regards to the topic "**Immunity of State officials from foreign criminal jurisdiction**", Israel thanks the Special Rapporteur, Ms. Concepción Escobar Hernández, for her third report, and commends her for the progress she has made on this important and complex topic. Israel also commends the thoughtful contributions by the members of the ILC. This impressive work has resulted in two additional draft articles, addressing the definition of the term "State official" and the so-called "subjective" scope of immunity *ratione materiae*.

Draft article 2 defines the concept of "State official" as including individuals "*who exercise State functions*" - that is, persons who may be granted immunity *ratione materiae*.

Israel recalls that there is consensus that the essence of immunity *ratione materiae* is the nature of the acts performed and not the identity of the individual concerned. For this reason, it was questioned whether a definition of the beneficiaries of such immunity was necessary. Along these lines, Israel supports the approach, also reflected in the commentary, that the term "State officials" should accentuate the nature of the act without specifying which acts should be covered by such immunity. This approach recognizes the need for flexibility and takes into consideration potential ramifications for a State, acknowledging that certain acts were undertaken on its behalf. Regarding this point, it should be clarified that the determination of whether the individual acted on the State's behalf, and consequently is entitled to immunity, should be the prerogative of that State.

In its previous sessions, the Commission accepted the proposition that the draft articles relate to the immunity that may be enjoyed by individuals who "*act on behalf of a State*". Nevertheless, the phrase "*who exercises State functions*" was adopted instead in order to emphasize the "subjective" element of immunity, that is to say the individual. Israel is of the view that the former formulation is preferable, since it highlights the nature of immunity *ratione materiae* as based solely on the sovereign nature of the acts performed; the individual performing the act is merely a beneficiary of such immunity. At the same time, it acknowledges that a spectrum of actions could be considered as acts of the State.

Mr. Chairman,

With respect to immunity *ratione personae*: we note that in paragraph (10) of the commentary to Article 2, the Commission explains that the phrase "*who represents*" must be understood in a broad sense, and clarifies that "*the reference to representation of the state may also be applicable to State officials other than the so-called 'troika'*." Israel supports the Commission in this respect, and accordingly wishes to reiterate its view that the group of high-ranking state officials who enjoy immunity *ratione personae* is not - and should not be - limited to the "troika" as it currently appears in draft article 4 - that is, the Head of State, the Head of Government and the Minister for Foreign Affairs. This malleable approach also reflects the position of the ICJ in the *Arrest Warrant* case; in that instance, there was no apparent intention to limit such immunity to these three high offices of state.

Finally, in light of these considerations, and in view of the complexity of this issue, Israel encourages further identification of State practice in order to assist in the formulation of guidelines regarding the scope and application of the immunity of State officials from foreign criminal jurisdiction.

Mr. Chairman,

With respect to the topic of "**The obligation to extradite or prosecute**", the government of the State of Israel wishes to express its appreciation to the significant work conducted by the International Law Commission on this topic and would like to congratulate it on the adoption of the final report. Israel would further like to express its deep appreciation to both the Chairman of the working group, Mr. Kriangsak Kittichaisaree and to the former Special Rapporteur, Mr. Zdzislaw Galicki.

As Israel has stated in its previous statements before the Committee, the legal basis of the principle to extradite or prosecute is solely derived from treaty-based obligations. There is not a sufficient basis under current international law or State practice to extend such an obligation beyond binding international treaties which explicitly contain such obligation. We agree with the working group's conclusion that when drafting treaties, States can and should decide for themselves which conventional formula regarding the obligation to extradite or prosecute best suits their objective in a particular circumstance. In this regard, Israel further agrees with the conclusion that it is futile to try to harmonize the various provisions and set out one model for all situations and treaties, owing to the great diversity in the formulation, content and scope of the obligation to extradite or prosecute in treaty practice.

In addition, Israel wishes to reiterate its view that the concept of universal jurisdiction should be clearly distinguished from the principle of the obligation to extradite or prosecute ("Aut Dedere Aut Judicare").

Finally, Israel wishes to express its appreciation to the Working Group for its study of the International Court of Justice's judgment on the case of *Belgium v. Senegal*. Nevertheless, Israel wishes to express its doubts as to whether broad and far-reaching implications could be derived from the specific circumstances presented in the judgment.

Thank you, Mr. Chairman