CHILE

SEVENTIETH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

SIXTH COMMITTEE

REPORT OF THE INTERNATIONAL LAW COMMISSION

Mr. Chairman,

I shall now refer to chapter X on **"Immunity of State officials from foreign criminal jurisdiction"**.

The Commission has been considering this topic for several years now and the current Special Rapporteur is the distinguished jurist Ms. Concepción Escobar Hernández.

The Commission had before it the Special Rapporteur's fourth report on the topic, devoted to the remaining aspects of the material scope of immunity *ratione materiae*, or "acts performed in an official capacity" and its temporal scope. The report contained proposals for an article 2 (f) defining "act performed in an official capacity" and a draft article 6 on the scope of immunity *ratione materiae*.

The immunity of State officials from foreign criminal jurisdiction is a manifestation of the principle of sovereign equality of States and is procedural in nature, since its sphere of application involves verifying whether a forum State can exercise its jurisdiction over another State, and does not consider whether the conduct of the individual enjoying immunity was lawful or unlawful. As stated in the draft articles provisionally adopted last year, immunity is granted to certain public officials who enjoy this privilege, whether *ratione personae* or *ratione materiae.*

Acts performed in an official capacity (defined in draft article 2 (f)) are a manifestation of State sovereignty and a form of exercise of the elements of the governmental authority. The definition given in article 2 (f) is simple and crucial: an act performed in an official capacity is an act performed by a State official exercising governmental authority. In addition, the term "act performed in an official capacity" reflects the wording used in this connection by international courts. The International Court of Justice used this terminology in the *Arrest Warrant* case between the Democratic Republic of the Congo and Belgium.

Draft article 6 on the scope of immunity *ratione materiae* appropriately combines the material and temporal aspects of immunity.

My delegation expresses support for the work of the Special Rapporteur and congratulates her on her laudable work. We look forward to the discussion on the commentaries to these draft articles at the next session and to the presentation of the fifth report on limitations and exceptions to immunity. In this connection, we are hoping for a discussion on the scope of the process of humanization of international law, so that immunity from jurisdiction is not invoked simply to ensure impunity for the most serious crimes covered by international law and so that it is brought

into line with the rules on territorial and extraterritorial jurisdiction of State in dealing with such crimes.

Mr. Chairman,

I shall now refer to the topic **"Provisional application of treaties"**, covered in chapter XI of the report.

The Commission has received the third report of the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, on the relationship of provisional application to other provisions of the Vienna Convention on the Law of Treaties and the question of provisional application with regard to international organizations. The Commission also had before it a memorandum by the Secretariat on provisional application under the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The Commission referred to the Drafting Committee six draft guidelines proposed by the Special Rapporteur.

While congratulating the Special Rapporteur on his work, we believe it is important in this connection to mention aspects of national law that could in practice limit the provisional application of certain provisions of treaties in cases in which, in accordance with such national legislation, those provisions require prior approval by the Legislature.

Article 25, paragraph 1, of the Vienna Convention on the Law of Treaties states that a treaty is applied provisionally pending its entry into force only if the treaty itself so provides or if the negotiating States have so agreed. It appears from this legal text that a treaty may be applied provisionally only with the consent of the parties and not in any other manner.

This topic is important because provisional application of a treaty has legal effects and creates right and obligations. And thus non-compliance with the provisionally applied treaty may create a liability on the part of the non-complying state. We therefore believe that it is essential that the wish of States to apply a treaty provisionally, or to decline to do so, should be clearly expressed.

We agree that each State is free in its sovereignty to decide whether or not to apply a treaty provisionally, and that this is the proviso to be included in this regard. Without an explicit intention on the part of the State to be bound provisionally, there can be no provisional application of the treaty and it will be necessary to await its entry into force.

Mr. Chairman,

In conclusion, my delegation congratulates the Commission on the fruitful work that it has done this year.

Thank you.