



KAZAKHSTAN

**STATEMENT
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Mr. Chairman,

My delegation is honored to address the Sixth Committee regarding the work of the International Law Commission on the topics Immunity of State Officials from Foreign Criminal Jurisdiction and Provisional application of treaties.

Mr. Chairman,

First of all, we would like to welcome further progress in the Commission's work on the topic "Immunity of State Officials from Foreign Criminal Jurisdiction" and commend the Special Rapporteur, Professor Concepción Escobar Hernández, for her fourth report based on systematic and well documented analysis of issues, which has obviously contributed substantially to the discussion and raised many highly important and critical questions for consideration.

The Special Rapporteur's assessment of international and national case law points to factors those are legally complex and politically sensitive for States. The fourth report has made evident that State practice is not uniform and, in that sense, it is not easy to identify the clear and unambiguous applicability of rules.

On our view, it is important that statements and comments submitted by States have been valuable material and depict how States perceive the various legal questions that come within the scope of this intricate subject.

My delegation supports the Special Rapporteur's view on the need to define what constitutes an "act performed in an official capacity", for the purposes of the draft articles, with the purpose of achieving legal certainty.

Mr. Chairman,

Now, turning to the topic “Provisional application of treaties” my delegation would like to welcome the work of the Commission on that subject and reiterate its conviction in the important role that the ILC could play in providing guidance and enhancing the understanding of this instrument of international law.

We also appreciate the Third Report of the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, and his analysis of State practice, and consideration of the relationship of provisional application to other provisions of the 1969 Vienna Convention, as well as, with regard to international organizations.

Considering internal laws, and the way in which States enter into treaties, it is important that internal rules cannot be ignored. We are confident that the scrutiny of different internal laws could provide greater insights into how States view the nature of provisional application as a legal phenomenon.

My delegation also shares the view that while article 25 of the 1969 Vienna Convention is the basis of the legal regime of provisional application of treaties, it does not answer all the questions related to the provisional application of treaties. In that case, we hope that the Commission will provide guidance to States on such questions as: which States may agree on the provisional application of treaties (only negotiating States or other States as well); whether an agreement on provisional application must be legally binding; and whether such an agreement can be tacit or implied.

Mr. Chairman,

We agree that the provisional application of treaties has legal effects and creates rights and obligations. In that context, it would be helpful if the Special Rapporteur further substantiate his conclusion that the legal effects of provisional application are the same as those after the entry into force of the treaty and could also investigate whether the termination or suspension processes for both regimes are identical.

My delegation would also welcome further consideration of the legal regime and modalities for the termination and suspension of the provisional application and appreciate for information to what extent the provisional application of a treaty might be suspended or terminated by. It could be in examples of violations of the treaty by another party, which was also applying it provisionally, or in situations where it was uncertain if the treaty would enter into force.

On our view, it is important to identify the types of treaties, and provisions in treaties, which were often the subject of provisional application, and whether or not certain kinds of treaties addressed provisional application similarly.

We believe it would be worthwhile to draft model clauses which could be of practical importance to States and international organizations in the context of the draft guidelines.

Mr. Chairman,

In conclusion, my delegation underlines its interest and is looking forward to following the work on aforementioned important topics.

Thank you.