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ROMANIA
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ROUMANIE
auprès des Nations Unies

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**70th Session of the General Assembly of the United Nations
Sixth Committee**

Agenda item 83

**International Law Commission
Report on ILC's 67th Session**

**Speech delivered by Corina Badea
Second secretary, Permanent Mission of Romania.**

New York, 9 November 2015



Mr. Chairman, allow me to refer first to:

Chapter V – Protection of the atmosphere

The Romanian delegation welcomes the results achieved until now on the topic concerning the protection of the atmosphere. The Romanian delegation is aware of the difficulties in adequately responding to this topic and for this reason would like to commend the Special Rapporteur, Mr. Shinya Murase, for his second report.

We welcome the clear definition of the term “atmosphere”, which we find useful to be used also outside the purposes of the guidelines. As to the definition of “atmospheric pollution”, as Party to the 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP) we would prefer listing living resources, in addition to the human life and Earth’s natural environment as endangered by atmospheric degradation.

We also welcome the clear statement of state’s obligation to cooperate for the protection of the atmosphere and in further enhancing scientific knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. We find this as key in the global demarches to protect our atmosphere and fully agree with the Commission in this respect.



Chapter X – Immunity of State officials from foreign criminal jurisdiction

The Romanian delegation would like to thank to the International Law Commission for the work on the very important topic of "*Immunity of State Officials from Foreign Criminal Jurisdiction*" and to congratulate Special Rapporteur Ms. Concepcion Escobar Hernandez, for her detailed and rich report dealing with the material and temporal scope of the immunity *ratione materiae*.

The Romanian side is fully aware of the difficulty to find the right balance between fighting impunity and ensuring stability in inter-state relations.

We support the approach of the Special Rapporteur, which may result from paragraph 124 of her Fourth Report, that the conclusion according to which “an international crime cannot be regarded as an act performed in an official capacity is based on the assumption that such crimes cannot” should not be accepted. The Rapporteur intends, as mentioned in paragraph 126 of the Report, to treat the “nature of the crime” and the “particular gravity” not in relation to the scope of the immunity, but in relation to exceptions. Romania endorses this “inclusive” approach. Romania also suggests, with respect to the future workplan on this topic, that caution should be paid when attempting to establish whether exceptions exist, as State practice may not be uniform.

Our delegation shares certain questions about the relevance for this topic of the “single act, dual responsibility” model, as expressed in paragraph 101 of the Fourth Report. The interrelation between the law of State responsibility – for



which attribution to a State is relevant – and immunity from criminal jurisdiction – for which attribution to an individual is relevant – should be better construed.

We welcome the elimination of the reference to the criminal nature of the act from the definition of the "*act performed in an official capacity*". While fully acknowledging the fact that the above mentioned definition is constructed "*for the purpose of the present draft articles*", we would like to avoid any interpretation, even isolate, that may lead to the conclusion that any act performed in an official capacity, by definition, constituted a crime. Given the complexity of the issue, illustrated by the rich jurisprudence mentioned in the Report, we would encourage a simple and flexible definition that would favor a case-by-case analysis, taking into account the circumstances of each case.

With respect to draft article 6, related to the scope of immunity *ratione materiae*, both the initial proposal of the Special Rapporteur as well as the proposal of the Drafting Committee are acceptable for the Romanian delegation.

Chapter XI Provisional application of treaties

The Delegation of Romania welcomes the work of the International Law Commission concerning the provisional application of treaties, and in particular the efforts of the Special Rapporteur, Mr. Gomez-Robledo, in drafting the third report on the topic and expresses its interest on the matter, as well as in other subjects on the ILC agenda concerning the law of the treaties. Therefore, the Romanian Delegation wishes to make the following remarks concerning the draft report on the provisional application of treaties:

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Romania welcomes the work of the Special Rapporteur, Mr. Gomez-Robledo, which serves as a very useful basis for further exploration and debate on the topic.

As it results also from its domestic legislation, provisional application of treaties is viewed by Romania as an exceptional, and therefore limited, treaty action, for reasons attached primarily to legal certainty. In this respect, Romania believes that the usefulness of a comparative study of various domestic provisions on provisional application of treaties, as varied as it may be, lies in the fact that they can contribute to understanding the State practice in the field.

As we are on the ground of treaty law, Romania underscores the relevance of the will of the parties in the case of provisional application. Therefore, the Romanian Delegation calls upon the Special Rapporteur to further investigate the issue of which States may agree on the provisional application of treaties (only negotiating States or other States as well) and whether such agreements, tacit or implicit, may be legally binding. On this particular point, Romania believes that deeper examination is needed on the question of whether the provisional application extends to the whole treaty or only to select provisions and if the legal effects of such application could continue after its termination.

Romania considers that further examination should consider the issue of provisional application, under various aspects, including that of the legal consequences of such application. The Report should address the question of whether the provisional application of a treaty has the exact same effects as its

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entry into force. In this respect, it would be helpful to see whether the termination and suspension processes for both regimes are identical.

On the point concerning the termination of provisional application, Romania encourages the International Law Commission to provide more guidance as to the possibility of unilateral termination or suspension to give rise to state responsibility under customary international law.

Considering the multitude of hypotheses mentioned above (going beyond the limited case provided for in paragraph 2 of article 25 of the Vienna Convention), as well as other possible variations, a more thorough analysis of the customary character (or not) of paragraph 2 of article 25, and its relationship with articles 19 and 46 of the Vienna Convention could prove very useful, especially for States, such as Romania, who are not parties to the Convention but apply it as customary international law.

As far as the future work is concerned, Romania subscribes to the proposal to further look into the question of the provisional application of treaties by international organizations, especially the question whether such arrangements are considered as a useful mechanism. Under this header, Romania supports giving a closer look to the issue of the *so called* headquarters agreements which, by their very nature, need to be implemented immediately and therefore are provided for provisional application. Additionally, other forms of agreements—such as an exchange of letters or diplomatic notes—represent a significant aspect to explore further.

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To conclude, Romania underlines its interest in the topic and is looking forward to the further study of the International Law Commission in this field.

573-577 3rd Avenue, New York, NY 10016
Phone: (212) 682-3273, (212)682-3274
Fax: (212) 682-9746



E-mail: misiune@romaniaun.org
Homepage: <http://mpnewyork.mae.ro>