

Statement by
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Before the Sixth Committee of the 71st Session of the UNGA
Agenda Item 78: Report of the International Law Commission on the work of its Sixty-Eighth session
(Cluster III – Chapters X, XI and XII)
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Thank you Mr. Chairperson

At the outset I wish to extend our warm appreciation to the Chairperson of the Commission Mr. Pedro Commisario Afonso for his presentation of the Third Cluster of topics in the Commission Report.

Our intervention today is limited to Chapter XI of the Commission Report namely, “Immunity of State Officials from Foreign Criminal Jurisdiction.”

We welcome the fifth report of the Special Rapporteur Ms. Concepción Escobar Hernández and appreciate the work done on this topic, especially in analyzing the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. Since the debate at this year’s session of the Commission was only the beginning of the discussion of this aspect of the topic, and it will be continued at the sixty-ninth session of the Commission, our delegation will limit itself to a few preliminary comments on this matter.

We note that this topic has given rise to divergent views and controversy within the Commission. Given the fact that the question of limitations

and exceptions is legally complex and politically sensitive, my delegation concurs with the view that this topic needs to be approached prudently and with sufficient caution.

Therefore we are also of the view that it may be premature at this time to discuss emerging trends, unless clearly established rules of customary law can be identified.

With regard to the proposed **draft article 7**, based on the conclusions in the report that immunity of State officials from foreign criminal jurisdiction *did not* apply to State officials in the context of immunity *ratione materiae*, it is unclear whether customary international law recognises the existence of an exception to immunity *ratione materiae* before a foreign criminal jurisdiction. In this regard we note that the report has not sufficiently followed the analytical process of identification of customary international law referred to therein.

Our delegation is of the view that there must be a delicate balance between the principle of sovereignty of states and maintenance of stability of relations among states on the one hand and the fight against impunity and the need for accountability on the other. Exceptions and limitations should therefore not be used as a mechanism to disturb the peace, interfere in the internal affairs of states or allow for politically motivated prosecutions. The principle of sovereignty of states or the will of their peoples should not be subordinated. The stability of inter-state

relations must not be undermined nor normal diplomatic relations between states so disturbed that it would defeat the course of international justice rather than contribute to the protection of human rights.

Therefore our delegation is in agreement with the views expressed by some members of the Commission that the focus should be on codification rather than progressive development of new norms of international law in dealing with the issue of limitations and exceptions.

We look forward to further work on this topic and reserve the right to make detailed observations at future sessions.

Thank you Mr. Chairperson.