

Check Against Delivery

STATEMENT BY

Dr. René Lefeber

Legal Adviser

Ministry of Foreign Affairs

Kingdom of the Netherlands

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Report of the International Law Commission

Cluster II

(VI (Protection of the atmosphere) and VII (Immunity))

VII – Immunity of State Officials

1. Mr Chairman, I will make a few remarks on the topic of immunity of state officials from foreign criminal jurisdiction.
2. Let me first extend my compliments to the Special Rapporteur, Professor Concepción Escobar Hernández, for her fifth report on this topic. I shall limit my comments to draft Article 7.
3. We welcome the increased attention to national legislative practice in the fifth report of the Special Rapporteur. As we have stated before, national legislation, in addition to national court decisions, is highly relevant for the determination of the existence of a rule of custom. My Government would support the Special Rapporteur's view that there is a trend towards the recognition of exceptions to immunity *ratione materiae* at the international and national level. Indeed, my Government would support this trend.
4. Therefore, my Government welcomes the concept as proposed in draft Article 7, on crimes under international law, in respect of which immunity *ratione materiae* shall not apply. It is the position of the Kingdom of the Netherlands that international crimes fall inherently outside the scope of acts in official capacity and therefore should not be susceptible to the plea of immunity.
5. Nevertheless, my Government shares the concerns of some members of the Commission regarding the choice of the Drafting Committee to include a limitative list of crimes. This list includes important crimes, but leaves out other crimes under international law, such as the crime of slavery. Also, the inclusion of a list of crimes will hamper the development of the notion of crimes under international law to which immunity would not apply. We would therefore prefer a general reference to 'international crimes' as the crimes to which the immunity *ratione materiae* shall not apply. This will allow for the interpretation of

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the concept of 'international crimes' in light of customary international law and the development of international criminal law. Examples of these crimes may be mentioned in the commentary, as long as it is clear that these are examples and not a limitative list.

6. In support of some members of the Commission, I believe that it is important to consider the substantive aspects of immunity *ratione materiae* in conjunction with the procedural aspects, as immunity remains a procedural matter.
7. My Government looks forward to the next report of the Special Rapporteur that will focus on the procedural aspects of immunity of State officials from foreign criminal jurisdiction, and will provide the Special Rapporteur with answers to the specific questions raised in this regard at a later time.
8. I thank you for your attention.