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Sixth Committee

Agenda item 81:  
Report of the International Law Commission on the work  
of its sixty-ninth session

Statement by Denmark, Finland, Iceland, Norway and Sweden

Delivered by Mr. Helge Seland,  
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Chair,

Speaking on behalf of the Nordic countries, Denmark, Finland, Iceland, Sweden and my own country, Norway, I will now turn to Chapter VII of the ILC report, concerning Immunity of State officials from foreign criminal jurisdiction.

The Nordic countries would again like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her fifth report focusing on limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. The issues addressed in the report have been the subject of recurrent debate in the Sixth Committee.

(Check against delivery)

Chair,

In essence, Chapter VII addresses limitations and exceptions to immunity before national jurisdictions for core international crimes. I will share a few comments on behalf of the Nordic countries.

Firstly, we would like to reiterate our view that for the gravest international crimes no rules of immunity should apply in national jurisdictions. In this respect, we encourage the Commission to strike a balance between the fight against impunity for serious international crimes within the sphere of national jurisdictions, and the need to preserve a legal framework for stability in inter-State relations.

It is an important, but complex and contentious topic, the ILC is working on, and we note the Commission's desire to proceed cautiously and prudently.

Secondly, the Nordic countries appreciate the analysis of practice, in the fifth report. We acknowledge the difficulty in drawing clear conclusions regarding some of the issues, and note the differing views in the Commission.

The Nordic countries put particular emphasis on the importance of rules pertaining to immunity before international courts. We would like to underline our commitment to the Rome Statute of the International Criminal Court, and in this respect in particular article 27, which declares the irrelevance of official capacity.

The irrelevance of official capacity in relation to individual responsibility for the gravest international crimes before international courts was recognised already in article 7 of the charter of the Nuremberg tribunal and should today be regarded as part of customary international law.

Thirdly, we support draft article 7, which the Commission provisionally adopted after a vote. We wish to underline the importance of including genocide, crimes against humanity and war crimes. We acknowledge the ongoing debate about the remaining categories. The Nordic countries support paragraph 2 about understanding the crimes according to their definition in the enumerated treaties. We would also support the inclusion of a “without prejudice” provision, as described in the fifth report.

Finally, the Nordic countries recognize that the question of limitations and exceptions is related to that of procedural aspects of immunity. The Nordic countries would support procedural safeguards applicable to decisions made by independent prosecutors, in order to ensure that all relevant aspects of cases involving claims of immunity are taken into consideration. Further, we remain convinced that robust mechanisms based on the rule of law are important to avoid politically motivated proceedings or an illegitimate exercise of jurisdiction.

The Nordic countries look forward to the continued work of the ILC on this topic and the sixth report of the Special Rapporteur. We encourage the Commission to seek to reach consensus on the most difficult aspects of this important topic, thereby creating the best possible conditions for its work to be taken further by States.

Thank you.