



SLOVENIA

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STATEMENT

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Agenda item 81

Report of the International Law Commission on the work of its sixty-ninth session, Cluster 2, Chapter VII: Immunity of State officials from foreign criminal jurisdiction

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Sixth Committee

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Mr Chairperson,

It is my pleasure to address the Sixth Committee regarding the work of the International Law Commission on Cluster 2 topic 'Immunity of State officials from foreign criminal jurisdiction'.

Slovenia notes that the Commission continued its consideration of the fifth report of the Special Rapporteur, which analysed the question of limitations and exceptions to the immunity of state officials from foreign criminal jurisdiction.

Slovenia agrees that the aspect of limitations and exceptions to immunity requires a detailed and careful examination which takes into account state practice, *opinion iuris*, and trends in international law. The provisional adoption by the Commission of draft article 7 by a recorded vote attest to the complexity of this question. Given the importance of the topic to states, Slovenia considers that these deliberations require appropriate attention, enough time and thoroughness. Moreover, we believe that as a general rule the Commission should strive to avoid recourse to a recorded vote when provisionally adopting draft articles. We would thus advise an approach that emphasises diligence over swiftness in deliberating on critical and challenging aspects of a topic.

Slovenia would like to reiterate its view that, while the immunity of state officials from foreign criminal jurisdiction is based on the principles of the sovereign equality of states, non-intervention, and the interest of states in maintaining friendly relations, this matter should also be addressed against the background of the growing prominence of legal humanism and the fight against impunity, in particular through the prism of the progressive development of international law and developments in international criminal law.

Slovenia considers that the Special Rapporteur reflected these underlying guiding aspects by making a clear distinction between the immunity regimes *ratione materiae* and *ratione personae* and their distinct rationale. We therefore share the views expressed within the Commission that, while today the status of customary international law does not allow for limitations and exceptions to immunity *ratione personae* in the context of inter-state relations, the opposite trend exists with respect to immunity *ratione materiae* and the most serious international crimes.

Slovenia supports the approach defined in draft article 7, paragraph 2, which focuses on the traditional 'troika', namely heads of state, heads of government, and ministers for foreign affairs, and emphasises that the enjoyment of immunity *ratione personae* is time-bound.

Furthermore, Slovenia welcomes the inclusion of a without-prejudice provision in the proposed paragraph 3, which takes into account, inter alia, a general obligation to cooperate with international tribunals.

At the same time, Slovenia appreciates, on the one hand, the delicate nature of the issue and the need to ensure a balance between the sovereign equality of states and stability in international relations, and on the other hand, the need to prevent and punish the most serious crimes under international law.

Slovenia considers that this balance would be achieved through a prudent approach to dealing with situations in which limitations and exceptions apply, as well as through a thorough examination of the procedural aspects of immunity, including procedural safeguards and guarantees, in order to address concerns regarding possible abuse.

With respect to the proposed list of crimes, Slovenia considers that, in order to strike the right balance between ensuring stability in international relations and the common interest in combatting impunity, the list of crimes quite rightly includes the core crimes of genocide, crimes against humanity, and war crimes. In this respect, Slovenia notes the decision of the Commission not to include the crime of aggression on the list of crimes at this time. While appreciating the specific nature of the crime of aggression, as well as the fact that the jurisdiction of the International Criminal Court over the crime of aggression is yet to be activated, Slovenia wishes to underline that the crime of aggression is the most serious crime under international law. Therefore, Slovenia considers that the inclusion of the crime of aggression on the list of crimes would merit reconsideration at the appropriate time.

Moreover, Slovenia notes that the crimes of apartheid, torture, and enforced disappearances are included in paragraph 1 as separate categories of crimes under international law, despite the fact that these crimes are included in the Rome Statute. Slovenia understands that the Commission reached this decision with a view to avoiding the threshold set in the Rome Statute. We consider that the choice of approach in this respect – that is, whether to follow the Rome Statute or include the three additional crimes as separate categories of crimes – should correspond to the common understanding of the level of gravity of crimes for which limitations and exceptions to immunity would be acceptable to the majority of states. For example, while the Rome Statute has been ratified by more than 120 states, the International Convention for the Protection of All Persons from Enforced Disappearance has been ratified by 57 states.

Furthermore, Slovenia wishes to point to the link between this matter and the on-going discussions within the Commission on the peremptory norms of general international law. Given that *jus cogens* rules are rules from which no derogation is permitted, Slovenia would welcome further examination of the possibility of considering violations of *jus cogens* norms in the context of limitations and exceptions to the immunity.

Concerning draft Article 7, paragraph 2, Slovenia agrees that the scope of this topic does not include the drafting of the definitions of crimes, and at the same time appreciates the Commission's mindfulness with respect to the principle of legal certainty.

However, while we understand the selection criteria used by the Commission in enunciating the draft annex, the limited approach in referring to the existing relevant sources of definitions of the crimes might appear unusually selective. For example, the annex does not list the Geneva Conventions and protocols thereto. Furthermore, listing the various conventions under specific subheadings, while omitting them from others, could give the impression, for example, that the Rome Statute does not proscribe the crimes of apartheid, torture, and enforced disappearances. What is more, not all states are parties to the listed conventions and not all states have transposed the relevant definitions into their domestic legal order. Slovenia proposes that the idea of an annex be considered again, both in terms its content and format. Alternatively, if not more advisably, the Commission could consider whether it would not be more appropriate to make a general reference to the sources of the definitions of the crimes as contained in widely accepted and contemporary treaties when guiding states to appropriate definitions of crimes. We would also welcome additional consideration of the consequences arising out of the differences between monist and dualist legal systems as well as the matter of the lack of universal transposition of the relevant definitions into domestic legal orders in the context of the present topic.

Slovenia wishes to reiterate the importance of the topic and to express support for the Special Rapporteur as she continues with her endeavours.

Thank you.