



SIXTH COMMITTEE

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CHECK AGAINST DELIVERY

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Statement by

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on the work of its seventy-ninth session

Cluster I

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Thank you, Mr. Chair,

We would like to begin by thanking ILC Chair, Ambassador Marcelo Vazquez Bermudez, for his report to the Sixth Committee, and all members of the Commission for their work during this year's session. We are particularly grateful to the Chair of the Drafting Committee, Professor Phoebe Okowa. We also sincerely thank the Codification Division of the Secretariat for their considerable efforts.

Mr. Chair,

We wish to reiterate three general remarks concerning the need for the Commission to attain and maintain the confidence of States in its work.

First, we stress that due regard should be given to views and comments of Governments on Draft Articles.

Second, we reiterate the principle clearly reflected in the Commission's statute - that State practice is a critical component for the codification and progressive development of international law.

Third, we emphasize that the Commission should clearly and explicitly differentiate between codification of international law, and progressive development of law. It is necessary to ensure that texts presented as codification of the law accurately reflect the law as it currently exists, sufficiently underpinned by State practice and *opinio juris*.

Mr. Chair,

Regarding the topic of “Immunity of State Officials from Foreign Criminal Jurisdiction” – Israel congratulates Professor Claudio Grossman Guiloff on his appointment as Special Rapporteur, and thanks him for his first report on this topic.

Israel attaches great importance to ensuring that perpetrators of crimes are brought to justice, and supports international efforts to fight crime and combat impunity effectively.

At the same time, Israel emphasizes the importance of the firmly established, fundamental rules on immunity of State officials from foreign criminal jurisdiction. These rules, which are central to both international law and international relations, were developed to protect the foundational principles of State sovereignty and equality; to prevent international friction and political abuse of legal proceedings; and to allow State officials to perform their duties without impediment.

Mr. Chair,

Israel welcomes the approach taken by the Special Rapporteur in his report - that the function of the Commission on second reading is to carefully assess whether a need exists to modify the Draft Articles and their commentaries based on the observations received, particularly in cases where significant divergences are evident.

Due to the importance of this topic and the divergent views among States on several core issues the Draft Articles currently address, Israel believes that during the second reading the Commission should take all the time necessary to address the substantial controversies, so as to ensure an effective output that can be generally endorsed by States.

Mr. Chair,

Israel wishes, once again, to make particular mention of Draft Article 7 and its related annexes, proposing exceptions to immunity *ratione materiae*. Israel shares the view - voiced by other States, and by some members of the Commission - that this Draft Article does not reflect the current state of international law, or any “discernible trend” in this direction. Moreover, in Israel’s view, it should not be welcomed as a proposal for progressive development of the law. Since the adoption of Draft Article 7, this approach has been confirmed by a number of domestic courts, which held that no such exceptions apply when officials acted in the course of the performance of their official duties. Israel thus reiterates its position that Draft Article 7 is not based on sufficient and relevant state practice or *opinio juris*, and should be deleted.

Proclaiming exceptions to immunity that States have not willingly endorsed by treaty or through widespread practice and *opinio juris* risks creating severe tensions among States. Moreover, immunity of State officials would be violated from the very process of examining the applicability of exceptions. The proposed exceptions may also be abused for political purposes.

In Israel's view, the procedural safeguards proposed in part Four of the Draft Articles do not, and cannot, sufficiently overcome the myriad of difficulties that Draft Article 7 raises.

Mr. Chair,

Israel once again asks the Commission to reconsider its position on the issue of immunity *ratione personae* discussed in Draft Articles 3 and 4, specifying that only the “troika” – the Head of State, Head of Government and Minister of Foreign Affairs – enjoy immunity *ratione personae*. Israel, like a number of other states, notes that under customary international law the category of State officials who enjoy such immunity is in fact broader.

In his report, the Special Rapporteur considers that no legal grounds have been provided to justify inclusion of other persons in the category of persons entitled to immunity *ratione personae*. Israel recalls that this notion was reflected in the ICJ's decision in the Arrest Warrant Case, and recalled in the case concerning Certain Questions of Mutual Assistance in Criminal Matters. The non-exhaustive nature of the list of persons who enjoy immunity *ratione personae* was evident in the use of the term “such as”, recognizing that the rationale for immunity is associated with the function the State official fulfills, and not only the title of their office.

This view is also reflected in decisions of national courts, and has been expressed by some ILC Members and numerous Member States.

International relations have evolved in such a way that high-ranking State officials outside the troika - for example, Ministers of Defense and Ministers of International Trade - have become increasingly involved in international fora and make frequent trips outside their national territory. Immunity *ratione personae* should be granted to State officials based on the character of their positions and the necessity of their functions to the maintenance of international relations and international order.

Israel emphasizes that, in practice, States holding this view would not pursue legal proceedings against a broader range of officials that meet this criterion. Decisions made in this regard, while not necessarily broadcast or accessible to the public, constitute an important element of State practice.

Israel believes that Draft Articles 3 and 4 should include a flexible criterion for immunity *ratione personae* based on the functions the officials perform.

In this context, Israel wishes to clarify that special mission immunity, based upon consent between individual States, is not a substantive replacement for immunity *ratione personae*.

Mr. Chair,

Israel welcomes the clarification in article 1(3)(b) regarding binding resolutions. Israel recalls that the term “binding resolutions” refers solely to Security Council Resolutions clearly indicating that they were adopted under Chapter VII of the UN Charter. This should further be clarified in the text.

We also appreciate the clarification in Article 5 and the linkage to Article 6 of the definition of immunity *ratione materiae* as relating to acts in the performance of official duty.

Mr. Chair,

Due to the importance of the topic, the divergent views among States on several core issues the Draft Articles address, and the important role of State practice in this regard, Israel believes that in the outcome of this project the Commission should limit itself to stating and clarifying international law as it currently stands.

Without prejudice to Israel’s position, should the Commission decide to disregard the significant concerns expressed by States, and endorse proposals for progressive development of the law, a clear distinction should be made between articles reflecting customary international law and those constituting progressive development.

In any case, due to the sensitivity of this topic, the practice of the ILC to reach consensus should be more rigorously upheld during the second reading. Similarly, the Commission should be mindful of the need to ensure that any outcome on this topic is broadly supported by States.

Rushing the second reading without addressing the significant concerns raised by many member states over the years could seriously risk undermining the whole project, as it will in all probability lead to a contested outcome that would further fragment international law, rather than further developing it.

As previously illustrated, adoption by the ILC of highly contested projects without properly addressing fundamental concerns leads to further disagreement in the Sixth Committee, in contrast to its longstanding history of consensus-driven resolutions.

Israel notes the Commission's request for additional comments and observation in its report, and our intention to submit further comments in writing.



Mr. Chair,

Regarding the topic of “Sea-level rise in relation to international law”, Israel reiterates its recognition of the vital importance of this topic to the entire international community. We strongly support the global efforts aimed at tackling the potential harmful impacts of this alarming phenomenon.

Israel acknowledges the Commission’s discussion on the potential legal challenges and implications of sea level rise. Israel shares the general support expressed in the Study Group, in favor of the continuity of statehood.

We also share the view that sea-level rise poses a serious threat to low-lying coastal states, archipelagic states, small island states and small island developing states, whose land surface may become totally or partially submerged and rendered uninhabitable.

The issues defined by the Study Group on this topic pose challenging legal questions related to fundamental principles of international law. Israel believes that a careful approach should be taken, and stresses the need to maintain legal stability, certainty and predictability.

Israel also supports the position that in addressing the impacts of sea-level rise, international cooperation is required between affected States and other members of the international community.

Mr. Chair,

Israel welcomes the Commission's consideration of protection of persons affected by sea level rise. In this regard we support the conclusion of the additional paper - that human dignity should constitute a guiding principle for any action to be taken in the context of sea level rise.

In connection with the Study Group's future work, Israel shares the view that the final report should not attempt to rewrite existing international legal frameworks, but should rather further address possible consequences of sea-level rise.

Mr. Chair,

Israel takes note of the recommendation of the Working Group to include the topics of "compensation for the damage caused by internationally wrongful acts" and "due diligence in international law" in the long-term programme of work for the Commission. We look forward to engaging with the Commission on these topics.

I thank you, Mr. Chair.