

Statement by India
Report of the International Law Commission (Chapters X, XI & XII)

I. Immunity of State Officials from Foreign Criminal Jurisdiction

Mr. Chairman,

On the topic, 'Immunity of State Officials from Foreign Criminal Jurisdiction', we appreciate the progress made thus far in the Commission.

We commend the Special Rapporteur, Ms. Concepcion Escobar Hernandez for her fifth report on the topic. We note that the Commission could consider her Report rather preliminarily and decided to continue the debate in the next session of the Commission, as the report was available only in English and Spanish to the Commission.

The Commission considered the single draft article 7 proposed by the Rapporteur on the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. Given the normative implications of the phrase 'limitations and exceptions', we agree with the methodology used by the Special Rapporteur and also the usage of title of the draft Article 7 – *Crimes in respect of which immunity does not apply*.

In the draft Article, the approach adopted by by the Special Rapporteur is consistent and systematic, based on the State practice as reflected in treaties and domestic legislation, as well as in international and national case law. The issues involved in the draft Article are highly complex and politically sensitive for the States and therefore, prudence and caution is needed to decide whether the Commission should focus on the codification aspect or progressive development of international law (*lex lata or lex ferenda*).

The International Court of Justice in the *Arrest Warrant Case*, expressed that there existed no customary law exception to the rule according immunity from criminal jurisdiction; and thus affirmed inviolability of incumbent Ministers for Foreign Affairs suspected of having committed war crimes or crimes against humanity. In the *Jurisdictional Immunities of the State*, the ICJ rejected such exceptions, although in the context of State immunity.

We consider that the 'crimes of corruption' referred in para 1 of sub para (b) of the draft article 7 needs to be supported with sufficient State practice convincing that its character would constitute a serious international crime, similar to that of other international crimes listed therein. Further, a determination should be made whether the acts of corruption fall within the 'acts performed in an official capacity' and thus fall within the scope of immunity *ratione materiae*.

Mr. Chairman,

We look forward to the next Session the Commission, when the Special Rapporteur

would introduce procedural aspects of immunity of State officials from foreign criminal jurisdiction.

II. Provisional Application of Treaties

We welcome the fourth report of the Special Rapporteur, Juan Manuel Gómez Robledo, on the topic 'provisional application of treaties'. The report continues the analysis of State practice, and considers the relationship of provisional application to other provisions of the 1969 Vienna Convention, as well as the question of provisional application with regard to international organizations. The report has also dealt with the topics in which States expressed interest during the debates in the 70th Session of the General Assembly.

It may be noted that the provisional application of a treaty will depend on the provisions of domestic law, including the manner of expressing consent. India being a dualistic State, treaty will not automatically form part of the domestic law; it applies only as a result of their acceptance by internal procedures. Thus resort to provisional application of treaties ie., treaties being applicable on the States before its entry in to force will go against the principle of dualism.

III. Protection of the Environment in Relation to Armed Conflicts

We take note of the third report of Special Rapporteur Marie G. Jacobsson, on the protection of the environment in relation to armed conflicts, which *inter alia* deals with the post-conflict phase and also. We would like to state that the draft principles proposed under this topic should not be in conflict with the obligations arising from existing conventions. And also the work on this topic should not duplicate the efforts already undertaken in the existing regimes.