

ISRAEL

67th Session of the General Assembly

CHECK AGAINST DELIVERY

Statement by:

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Agenda Item 79

**Report of International Law Commission on the work of its
sixty-third and sixty-fourth session**

6 November 2012

United Nations

New York

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Mr. Chairman,

Let me reiterate my delegations deep appreciation to the work of the ILC, and to address the topics currently before the Committee.

With regard to the consideration of “**Immunity of State Officials from Foreign Criminal Jurisdiction**,” Israel would like to express its appreciation to the Special Rapporteur for her preliminary report on this important and complex subject and welcomes continued examination of the issue by the Commission.

Israel’s initial observations concerning the report are as follows:

First, we concur with the view expressed in previous reports that the concept of immunity of state officials from foreign criminal jurisdiction already is the result of balancing several international law principles, including state sovereignty, equality of states and accountability for crimes.

Second, we agree with the Special Rapporteur that it is important to retain the distinction between immunity *ratione personae* and immunity *ratione materiae* in the course of the Commission’s work, as they are separate immunities.

Third, Israel firmly believes that immunity *ratione personae* is absolute. We consider immunity *ratione personae* to extend not only to heads of State, heads of governments and ministers of foreign affairs, but also to apply equally to other senior State officials who effectively embody the State or represent the State in international affairs. As titles can vary widely from country to country, the Commission should identify general criteria to assist States in identifying on a case-by-case basis senior officials who are entitled to immunity *ratione personae*.

Fourth, given the divergent views within the international community with respect to this issue and the wide variance in national practice, Israel is of the view that *lex lata* is the appropriate framework for considering this topic. Accordingly, we support the approach of the Special Rapporteur to continue with a detailed study of national practice with respect to this issue.

Last in this context, Israel is of the view that it is premature, at this stage of consideration, to discuss the final outcome of the Commission’s work.

Turning to the subject of **Provisional Application of Treaties**, Israel welcomes the inclusion of this topic in the long-term programme of work of the Commission and congratulates the Special Rapporteur for his nomination and preliminary thoughts.

In this regard we wish to inform the Committee that the practice in Israel is that, while there is a possibility for the use of provisional application of treaties, it is applied only in exceptional circumstances. Israel looks forward to a beneficial exchange of views on this topic.

With regards to the topic of "**Formation and evidence of customary international law**" we support the inclusion of this important topic in the long term programme of the Commission's work and we welcome the appointment Sir Michael Wood as Special Rapporteur.

In recent years Israel has followed with concern the simplified process by which certain rules have been characterized as having a customary nature. Due to the significant implications which such a conclusion has on the legal obligations of States, Israel believes that it is important to adopt a careful and responsible approach as to the process of formulation of customary international law.

In respect to the question of methodology used for the study, Israel strongly supports focusing on the actual practice of states rather than on written materials. In addition, it is our view that the weight given to resolutions of international organizations should be considered with great caution, due to the highly political background from which such resolutions grow which stems from the fact that such resolutions tend to reflect the political balance between States more than their sense of legal obligation towards a certain practice.

As to the scope of the topic, Israel supports the view of the Special Rapporteur and members of the Commission, that the topic should not include at this stage, the consideration of new peremptory norms of general international law (also referred to as "jus cogens"). We believe that at this initial phase of the study all resources should be allocated to the extensive and in depth examination of the core principles of the topic before reviewing other aspects.

Finally, in light of these and many other aspects of the topic which require careful consideration, Israel is of the opinion that it is premature to decide on the final outcome of the Commission's work on the topic at this stage. We look forward to the fruitful exchange of views between States and the further work of the Special Rapporteur on this topic.

Mr. Chairman,

On the topic of **The obligation to extradite or prosecute** my delegation wishes to express its appreciation of the Committee's work on this complex topic which involves the consideration of the delicate balance between State sovereignty and the safeguarding of fundamental human rights.

While Israel believes that the topic in itself is of importance, we have considerable doubts as to whether the Commission should continue its consideration at this stage, due to the questions raised by members of the Commission regarding the usefulness of continuing with this topic.

However, if the consideration of this topic were to proceed, we wish to reiterate our view that the legal source of the principle to extradite or prosecute is solely derived from treaty-based obligations. There is not sufficient basis under current international

law or State practice to extend such an obligation beyond binding international treaties which explicitly contain such obligation.

Israel reiterates further its view that the concept of universal jurisdiction should be clearly distinguished from the principle of "*aut dedere aut judicare*", and we remain doubtful as to whether the issue of universal jurisdiction should be considered in this context.

With respect to the subject of **Treaties over Time**, we congratulate Professor George Nolte on his nomination as Special Rapporteur for the topic of "Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties."

With respect to the issue of contradictory subsequent practice outlined in Chapter X Paragraph 19.4 of the Draft Report of the Commission, Israel favours the position that subsequent practice which is contradicted by the practice of any other party to the treaty, should be discounted. Such a position would ensure that the principle of consent which is central to international law will be preserved by ensuring that States will not be bound by actions which they did not intend to be bound by at the time of signing of a treaty.