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Delegation of the Republic of Korea

Report of the International Law Commission on the work of its seventy-second session (Agenda 82)

Sixth Committee, 76th session of UNGA

New York

Cluster 2: Immunity of State officials from foreign criminal jurisdiction / Sea-level rise in relation to international law

Madam Chair,

With regard to the topic of “**Immunity of State officials from foreign criminal jurisdiction**”, my delegation would like to express its appreciation to the ILC for successfully completing its Plenary Session discussions on the Special Rapporteur’s 8th Report and provisionally adopting Draft Articles 8 *ante*, 8, 9, 10, 11 and 12. The six draft articles encompass truly crucial procedural issues in applying the immunity of State officials in domestic courts. The Korean Government is of the view that it is important for the Commission to address States’ concerns, and find an appropriate consensus amongst diverse views on this topic before completing its first reading.

My delegation would now like to offer the following comments on the work of the ILC this year.

First, my delegation would like to express its gratitude to the Commission for its efforts to shed light on some procedural issues in the exercise of State criminal jurisdiction to officials of another State amidst the difficulties posed by the diversity of legal systems. In this regard, my delegation welcomes the decision by the Drafting Committee to use, in Draft Articles 8 and 9, general terminology such as “initiation of criminal proceedings” or “coercive measures” instead of legal terminology specific to the legal systems of the respective countries. Furthermore, we welcome the Commission’s decision not to identify the authorities with the competence to make decisions relating to the waiver of immunity.

Second, taking into account that there can be a diverse range of different forms of

procedural systems in the respective States, my delegation would like to request that the Commission clarify, at an appropriate time, key terms used in the draft articles, such as “criminal jurisdiction” and “criminal proceedings”. My delegation notes that the term “criminal jurisdiction” has been discussed in the Second Report of the Special Rapporteur yet has not been considered by the Drafting Committee. Even though the Commentary to Draft Article 8 does point to “governmental, police, investigative and prosecutorial acts” as potentially falling into the scope of the exercise of “criminal jurisdiction” under the aforementioned article, my delegation believes there is value in the Commission identifying the threshold by which a particular governmental action could be construed as an “exercise of criminal jurisdiction.” Also, even though “criminal proceedings” referred to in the commentary as “commencement of judicial proceedings” does to some extent clarify its meaning, my delegation believes that a clearer definition of “proceedings” would be of great value.

Third, regarding Article 8 *ante*, it seems the Commission intends to apply this provision generally to other provisions of the draft articles. However, as set forth in its Commentaries, there are different views within the Commission concerning the scope of Part Four. In light of the divergence of views, my delegation humbly requests that the Commission engage in further review and in further discussions on whether the adopted Article 8 *ante* is fully apt as is.

Madam Chair,

Turning to the topic of “**Sea-level rise in relation to international law**”, my delegation welcomes the meaningful progress made by the ILC Study Group on this matter. We would like to thank the two Co-chairs, Mr. Bogdan Aurescu and Dr. Nilüfer Oral, for presenting an informative and comprehensive paper last year. We also appreciate the fruitful discussion by the Study Group on this topic. Given the sensitivity and complexity of this matter, the Korean delegation humbly requests that the Study Group engage in further deliberations on the themes presented by the Co-Chairs.

Thank you, Madam Chair.