

Statement of the Hashemite kingdom of Jordan  
Before the Sixth Committee  
of the 76th Session  
of the United Nations General Assembly  
On the item  
"Clusters 1,2 & 3"

*Delivered* November 3<sup>rd</sup>, 2020

- My delegation expresses its appreciation for the ILC and the work it has done to bring its 72nd session to a successful conclusion. The resilience of the Commission and its ability to conduct its meetings during the session in a hybrid format during the COVID-19 pandemic is remarkable considering the challenges it has faced in doing so. The Secretariat's invaluable role in preparing for the Commission's work, conducting the meetings' technical and logistical arrangements, and providing the necessary support for members is commendable
- The ILC managed to adopt two second readings and achieve significant progress on four other topics on its agenda and, if it weren't for the health and safety restrictions in place during the session, a first reading on the topic "immunity of State officials from foreign criminal jurisdiction" would probably have been issued too. This attests to the ability of the ILC to adapt its methods of work in the manner necessary to achieve progress in its work despite the challenges it may face.

- If you allow me Madam Chair to outline Jordan's position on the various topics and issues raised in the ILC report.
- On the topic “protection of the atmosphere”, Jordan commends the Special Rapporteur, Mr. Shinya Murase, for the excellent work he has done over the years that culminated in conclusion of the ILC work on the topic. The draft guidelines fill a necessary gap in the international legal framework for the protection of the atmosphere from atmospheric pollution and atmospheric degradation; and the collective obligation on states under draft guideline 3 is the cornerstone of such a protection.
- While the precautionary principle is not directly dealt with in the draft guidelines, we view it as an important element in the atmospheric protection regime. Nonetheless, this principle is implicitly reflected in several guidelines, including guideline 3 (the general obligation), guideline 4 on “environmental impact assessment”, guideline 5 on “sustainable utilization” and guideline 6 on “international large-scale modification”.
- While the protection of the atmosphere requires individual and joint action, Jordan does not view this obligation under the draft guidelines as obligation *erga omnes*. The commentary is clear in this regard. Furthermore, compliance under draft guideline 11 is only limited to those rules and procedures in the relevant agreements to which states are parties.

- On the “provisional application of treaties”, Jordan wishes to thank the Special Rapporteur Mr. Juan Manuel Gómez Robledo for his work on the topic and the adoption by the Commission of the “Guide to Provisional Application”.
- The draft guidelines are based on article 25 of the Vienna Convention on the Law of Treaties. However, the lack of established and consistent practice has made the work on this topic challenging. Nonetheless, the guide and its commentaries provide a useful tool for states, international organizations, and practitioners to understand its scope and harmonize the relevant practice to the furthest extent possible. The guide is more in the realm of progressive development and contains the necessary flexibility for implementation and formulation of clauses related to provisional application.
- There are draft guidelines that follow *mutatis mutandis* those provisions contained in the Vienna Convention on the Law of Treaties concerning the entry into force of a treaty. It is, therefore, important for states to pay special attention to such guidelines in the context of developing practice.
- In this regard, more discussion should be undertaken on the legal effects of provisional application, reservations, resolutions of international organizations as forms of agreements, and the interaction between the internal law of states, rules of international organizations and the provisional application regime.

- On immunity of state officials from foreign criminal jurisdiction, Jordan expresses its support for the work of the ILC on the topic. Sovereign equality and fighting impunity for international crimes are two legitimate interests which should go hand in hand in this project.
- Immunity *ratione personae* is absolute for the Troika, and this is well-established in international law. The draft articles provisionally adopted by the ILC are clear on this matter and should remain so even with the introduction of the “no-prejudice clause” as regards to the relationship with international criminal jurisdictions.
- Jordan also supports the limitation to immunity *ratione materiae* under draft article 7. Such crimes contained therein are the most serious of concern to the international community; and it is against this background that limitations to such forms of immunity should exist. The right of the state of the official to functional immunity in such situations should not prevail over the right of the forum state in exercising jurisdiction.
- Nonetheless, there should be procedural guarantees to safeguard against political prosecutions against foreign officials and we welcome the introduction by the Special Rapporteur Ms. Concepción Escobar Hernández of the general procedural provisions. We are nonetheless of the view that special guarantees be attached to the application of article 7 which would facilitate wider acceptance to its content and balance the legal interests of the relevant states.

- In this context, we welcome the proposal by the Special Rapporteur for a dispute settlement mechanism in draft article 17. It should be binding and have a suspensive effect; although we would prefer that the suspension would occur as a result of invocation of immunity and for a specific period of time.
- On the relationship with the international criminal jurisdictions, we do not view a *non-prejudice* clause to be necessary, as immunity from foreign criminal jurisdiction is a horizontal legal relationship between states. In any case, the *non-prejudice* clause should not lead to the primacy of international jurisdictions over this horizontal relationship. States should not circumvent their obligations towards other states concerning immunity on the premise of such a *non-prejudice* clause.
- On Sea-level rise, we wish to thank the ILC for having this important topic on its active agenda, as sea-level rise is a real threat to states, and populations worldwide and has significant implications on specially affected states, their territories, maritime zones, and sovereign entitlements.
- We also commend the study group and its co-chairs, Mr. Bogdan Aurescu and Ms. Nilüfer Oral, for the first issues paper on matters related to the law of the sea. The paper is comprehensive in describing the aspects of the topic related to maritime zones, baselines, and maritime limitations.
- Jordan is of the view that the discussions of the study group have been useful and reiterate the importance of maintaining

the integrity of the 1982 United Nations Convention on the Law of the Sea. Any outcome in this regard should take into account legal certainty, equity and stability; and balance the legitimate interests of all relevant states and the international community as a whole. Furthermore, the rules on interpretation under the Vienna Convention should be applied in good faith and in light of the objects and purposes of the UNCLOS to arrive to the necessary conclusions as regards to baselines, maritime zones and entitlements

- Jordan also looks forward to receiving the second issues paper on statehood and human rights from the Study Group to be co-chaired by Ms. Patrícia Galvão Teles and Mr. Juan José Ruda Santolaria.
  
- On “general principles of law”, we wish to thank the Special Rapporteur Mr. Marcelo Vázquez-Bermúdez for his second report and express our support for the topic. The topic complements the previous ILC work on the sources of international law and should provide the necessary clarifications for the value, content, and identification of general principles of law.
  
- We reiterate the importance of the topic being *based* on article 38 (1) (c) of the ICJ Statute. In this regard, Jordan expresses its position supporting the first category of general principles of law, i.e. those principles deriving from the national legal systems. This category is well-established as a source of international law, however its scope, role as a source, legal nature and methods of identification, are yet to be settled. This is where the ILC can play a significant part

in providing the necessary understanding of such related elements through a set of conclusions.

- Recognition is a requirement in article 38 (1) (c) and we agree with the language used in draft conclusion 2, i.e. recognition by the “community of nations.” We do not view the term “nations” as vague – after all this Organization is called the United Nations! And this term “Nations” goes beyond the term “States” while being faithful to the object and purpose of article 38 (1)(c).
- We encourage the ILC to have an in-depth analysis of the requirement of recognition of general principles of law derived from the national legal systems and the meaning of transposition to the international legal system. A rule in national law should be *capable of being transposed* and we view the issue of compatibility with fundamental principles of international law as irrelevant and problematic.
- Jordan also expresses its doubt regarding the category of general principles of law formed within the international legal system. National and international courts and tribunals have been using terms such as principles of international law or general principles of international law to describe customary international law, and this has contributed to the confusion that there exist general principles of law formed within the international legal system. Such a category is only supported by limited literature which promotes such a view based on deduction, not practice or acceptance of this category by states. The ILC should exercise caution in this regard.

- Finally, Madam Chair,  
Jordan would support any decision by the Commission to include on its active agenda any topic placed on its long-term programme of work. We have trust in the Commission in choosing the topics as it deems appropriate for its working methods and schedules and in exercising its mandate for progressive development and codification.

Thank you