

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York

Statement of the **Hashemite Kingdom of Jordan**

Before the Sixth Committee of the 77th Session

of the United Nations General Assembly

Delivered by

H.E. Permanent Representative Ambassador Mahmoud D

Hmoud

On the agenda item

"Report of the ILC"

Clusters 2 + 3



The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York

Today I will tackle cluster two and three of the ILC report, in particular the topics immunity of State officials from foreign criminal jurisdiction and general principles of law.

Immunity of State officials from foreign criminal jurisdiction:

At the outset, my delegation wishes to thank the Special Rapporteur, Madame Escobar-Hernandez for her efforts and dedication to the topic over the years which led to the adoption by the ILC of a set of draft articles on first reading.

Despite the immense political pressure on the Special Rapporteur to change her position on the issue of exceptions to immunity *ratione materiae*, she refused to politicize the matter or compromise her principled position, which led to her not being re-elected last year.



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

We commend Madame Escobar-Hernandez for her stance and wish the Commission to continue with her legacy in the Commission when it considers the draft articles on immunity on second reading.

Nonetheless, the Commission, as a result of the Special Rapporteur's efforts, was able to reach an agreement on the procedural aspects related to immunity that provide safeguards and guarantees against politicized prosecution, especially in the case of exceptions to immunity under draft Article 7.

We urge delegations to consider accepting such as safeguards and guarantees as they examine the content of draft Article 7. The underlying balanced should be preserved in order to ensure respect for the rights of the State of the official, the right of the foreign State and the rights of the official.

The crime of torture, as exception under Article 7, is of particular concern, because it may be abused for political purposes against officials of another State. That is why it is



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

important to apply the procedural safeguards and guarantees as contained in the draft articles to avoid sham prosecutions.

I will turn briefly to the content of the draft articles that were finalized during the 73rd session of the ILC:

My delegation remains of the view that immunity *ratione personae* is absolute for the Troika under the rules of customary international law, as reflected in the existing text of part two of the draft articles. We do not see paragraph 3 of article (1) on the rights and obligations of States Parties under agreements establishing international criminal courts as necessary. However, the consensus reached on that paragraph preserves the rights of the State of the official against judicial advocacy and the commentary makes it clear that the absolute nature of immunity *ratione personae* of the sitting Troika is not affected.

Jordan welcomes the text of article (12) on the need for the wave of immunity to be express and in writing. This reflects



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

State practice and is in line with the relevant treaties on privileges and immunities.

Jordan also welcomes the incorporation of a provision on transfer of criminal proceedings to the State of the official. The text of draft article (15) sets the right balance between the legal interests of the forum State and those of the State of the official.

We would have wished that the draft articles contained a provision on the suspension of criminal proceedings as part of the settlement of disputes mechanism (under article 18). However, my delegation can accept the text of the draft article in the hope that the second reading may contain a provision on the suspensive effects of the invocation of dispute settlement.

Jordan also welcomes the text of paragraph 3 of article (14), on the determination of immunity which it considers as an important safeguard against sham prosecutions under article (7).



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

I now turn to the topic “General Principles of Law”

My delegation wishes to express its deep gratitude for the Special Rapporteur, Ambassador Marcelo Vasquez-Bermudez, for all his efforts which led to the “near” conclusion of a first reading on the topic’s draft conclusions. We look forward to receiving the full set of draft conclusions on first reading next year.

I will only tackle the issue of the so-called general principles of law that may be formed within the international legal system.

Again, my delegation has serious doubts on the existence of such category that we expressed last year. Such a category is only advocated for in literature and some academic writings. It is neither supported by States practice nor by the opinions of the



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

ICJ. The examples mentioned in the reports of the Special Rapporteur are essentially examples of customary rules which are confused as general principles of law due, in part, to the language used by courts and tribunals to describe them; such as “general principles of international law” or “general international law” or “principles of international law.”

The concern we have is the criteria of determination of general principles of law formed within the international legal system. Such a criteria under conclusion (7) will lead to further confusion with the identification of customary rules and will open the doors wide open for legal activism to advance certain principles as “being recognized by the community of nations as intrinsic to the international legal system!”

The novel methodology for the identification described in the commentary as inductive and deductive, purports to confuse customary rules with General Principles of Law, and we are worried that it will be used as means to bypass the stringent



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

identification process for CIL to declare such principles as GPL formed within the international legal system.

The second report of the Special Rapporteur received much criticism for proposing the deductive approach. Now in the third report, the Special Rapporteur decided to add to inductive approach and create a “deductive-inductive” approach. Again, this is both novel and implementable!

My delegation wishes that the Commission would have opted for a no-prejudice clause, as the majority of the Commission either refused or had doubts about this second category. We regret that the ILC report does not reflect this in the commentaries to conclusions (3) and (7) which give the opposite impression! It is our hope that the Commission reconsiders its position and re-drafts conclusion (7) to a no-prejudice clause without giving such an imaginary category more value than it deserves.



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

Shortly on the topic “succession of States in respect of
State responsibility”

My delegation wishes to express its disappointment with the outcome on the topic.

Since the beginning of its consideration by the ILC, it has been misguided due to the insistence of the Special Rapporteur to advance certain hypothesis that the Commission overwhelmingly rejected.

When, finally, it became clear that such an approach will not be successful, and in order to rush a first reading, the Special Rapporteur suggested, and the Commission accepted, to change course and format from draft articles to draft guidelines.

What the Commission ended up with is a disjointed hybrid set of draft articles and draft guidelines, short of a first reading.

It is the hope of my delegation that the Commission reconsiders the topic next year and removes it from its agenda.



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

On the topic Sea-Level rise:

I wish to thank the co-chairs for the immense work they have done in producing the two issues papers. I also thank co-chairs professors Galvao-Teles and Ruda-Santolaria for the 2nd issues paper on Statehood and the protection of persons affected by sea level rise which was discussed by the ILC in its 73rd session.

My delegation expresses its full support for the Commission work on this important topic which will have practical consequences on the response of the international community to this phenomenon.

As has been expressed by several members of the Commission, during the debate, the Commission should exercise caution in suggesting the presumption of continued Statehood. The examples contained in the second issues paper are not convincing as evidence of this presumption. The goal should be



**The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York**

to find practical legal solutions to the issue of statehood due to sea-level rise.

Finally, chair

My delegation commends the Working Group on the Long-Term Programme of Work for advancing the agenda of the Commission.

We look forward on the inclusion of the topic “non-legally binding international agreements” as proposed by Professor Mathias Forteau, on its active agenda. We welcome the ILC’s decision to include on its agenda the topics: “Prevention and repression of piracy and armed robbery at sea”; “subsidiary means for the determination of rules of international law” and “the settlement of international disputes to which international organizations are parties”. We wish the newly appointed Special Rapporteurs on these topics: Ambassador Jacouba Cissé, Professor Charles Jalloh and Professor August Reinisch all success in their future work.