

STATEMENT BY
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Report of the International Law Commission
Part 1

PART 1

Chapters I – III, IV, V and XII

Mr. Chairman,

1. Let me first of all congratulate the International Law Commission on the progress of its work this year. The report gives us an interesting overview of the discussions about a broad range of questions of international law. And I also wish to congratulate Mr. Vázquez-Bermúdez who was elected to the Commission to fill a casual vacancy. We wish him wisdom in his work in the Commission.

Chapter IV

(Subsequent agreements and subsequent practice in relation to the interpretation of treaties)

2. On the topic of subsequent agreements and subsequent

Vienna Convention on the Law of Treaties, but the commentaries provide

Chapter V
(Immunity of state officials from foreign criminal jurisdiction)

Mr. Chairman,

5. I would like to turn to the topic of immunity of state officials from foreign criminal jurisdiction. Allow me first of all to commend the Special Rapporteur, professor Concepción Escobar Hernández, for her second report on the topic; her thorough analysis of the matter has obviously contributed substantially to the discussion in the Commission on the drafting of the first four articles. Although the Special Rapporteur broached many highly important and interesting ques

of State, Head of Government and Minister of Foreign Affairs) and to those(diplomats and others) falling under specialimmunity regimes. My Government is of the opinion that under customary international law all members of official missions are entitled to immunity from criminal jurisdiction. They must be regarded as temporary diplomats who need immunity to be able to perform their duties. Of course, the term “official mission” requires further definition. These missions should (a) be temporary in nature, and (b) represent a State, (c) be a mission to the

obligations. Certainly for my country, being hoststate to the International Criminal Court and many other international criminal tribunals, this question is of great importance.

8. We have to recognize that functional immunities are immunities which cling to those who enjoy immunity *ratione personae*, even after they have left office. The Commission's commentary correctly reminds us of the fact that Heads of State, Heads of Government or Ministers of Foreign Affairs may, during their term of office have carried out acts in an official capacity which do not lose that quality merely because the term of office has ended and may accordingly be covered by immunity *ratione materiae*.

9. The Netherlands Government assumes however that there is international law developing to exclude functional immunities of State officials suspected of international crimes committed in the course of their duties. Thus national courts may at times not be precluded from exercising criminal jurisdiction over such persons.

10. Even where the Dutch International Crimes Act does not distinguish
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international community. Thus we appreciate that the Commission has been looking into the desirability of formulating a specific instrument with respect to crimes against humanity. However, we consider that this issue needs to be addressed in the light of the Rome Statute, and the need to ensure its universality in the near future.

Mr. Chairman,

12. The formulation of article 7 of the Statute of the International Criminal Court has greatly contributed to specifying and defining the crime against humanity. It has been an achievement to agree to this provision, and indeed to establish the Statute. We would suggest this is a definition applicable to States parties to the Rome Statute and States not party alike. Furthermore, let us not forget that crimes against humanity are part of the jurisprudence of among others the Tribunal for the former Yugoslavia, and as such a well-established part of customary international law.
13. In our view, therefore, what is needed for the prevention and prosecution of crimes against humanity at this stage is a reinforced focus on improving the international capacity to prosecute such crimes at domestic level. Also because of the importance of the principle of complementarity, we must build on the system of the Rome Statute and facilitate cooperation between the judicial authorities of our

